

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1960

No. 102

ANDJA KOLOVRAT, ET AL., PETITIONERS,

vs.

OREGON.

ON WRIT OF CERTIORARI TO THE SUPREME COURT
OF THE STATE OF OREGON

PETITION FOR CERTIORARI FILED MAY 26, 1960
CERTIORARI GRANTED OCTOBER 10, 1960

SUPREME COURT OF THE UNITED STATES

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No. 102

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{fol. 1]

[File endorsement omitted]

**IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH****Department of Probate****No. 71287**

**In the Matter of the Estate of
JOE STOICH, Deceased.**

**PETITION OF THE STATE OF OREGON FOR FINDING AND
ORDER OF ESCHEAT—Filed April 30, 1954**

The State of Oregon, acting by and through the State Land Board, respectfully represents to this honorable court:

I.

That it appears from the records and files in the proceedings in this estate that Joe Stoich died intestate on December 6, 1953, in Multnomah County, Oregon, leaving property located in this state.

II.

That your petitioner is informed and believes and therefore alleges that Joe Stoich died survived only by two brothers, Ivan Stoic and Mile Stoic, who are residents and inhabitants of Yugoslavia.

III.

That your petitioner is informed and believes and therefore alleges that reciprocal rights of inheritance as prescribed by ORS 111.070 did not as of the date of the decedent's death, and do not now, exist between the United States and Yugoslavia, and that under the provisions of ORS 111.070 the said Ivan Stoic and Mile Stoic are not entitled to take or receive the proceeds of this estate.

IV.

That your petitioner is informed and believes and therefore alleges that there are no other heirs, legatees or devisees of said decedent legally entitled to take or receive the proceeds of this estate and that the same escheated to the State of Oregon under the provisions of ORS 111.070, 120.010 and 120.030.

[fol. 2] Wherefore, your petitioner prays for an order as follows:

1. That ~~Joe~~ Joe Stoich died on December 6, 1953, in Multnomah County, Oregon, leaving property in this state, without heirs, legatees or devisees legally entitled to take or receive the proceeds of his estate.

2. That the clear proceeds of the estate escheated to and became the property of the State of Oregon on the date of the death of the said decedent.

3. That the executor of said estate deliver the clear proceeds of this estate to the State Land Board of the State of Oregon for payment into the common school fund.

Robert Y. Thornton, Attorney General, Catherine Zorn, Assistant Attorney General, Attorneys for Petitioner.

Duly sworn to by E. T. Pierce, jurat omitted in printing.

[fol. 3]

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

DEPARTMENT OF PROBATE

No. 71 287

In the Matter of the Estate of
JOE STOICH, Deceased.

ANSWER OF HEIRS TO PETITION OF THE STATE OF OREGON
FOR FINDING AND ORDER OF ESCHEAT—Filed July 16, 1954

Come now Drago Stojic, Dragica Sunjic, Neda Turk, Josip Buljan, Jure Zivanovic, Mara Tolie, Milan Stojic, and Andja Kolovrat, by Branko Karadjole, Consul General of Yugoslavia at San Francisco, California, their consular representative and attorney in fact, by Peter A. Schwabe, of Haas & Schwabe, their and his attorneys, and for their answer to the Petition of the State of Oregon for Finding and Order of Escheat, filed herein, admit, deny and allege as follows:

I.

Admit Paragraph I of said petition.

II.

Deny Paragraph II of said petition, but allege that they are all of the next of kin and heirs at law of the said Joe Stoich, deceased, their ages, relationships and shares of inheritance being as follows:

Drago Stojic, age 49, nephew,
Dragica Sunjic, age 47, niece,
Neda Turk, age 41, niece,
(each entitled to 1/15th)

being all of the children and issue of Mijo Stojic, a pre-deceased brother,

Josip Buljan, age 55, nephew,
(entitled to 1/5th)

being the only child and issue of Joka Buljan, a pre-deceased sister,

Jure Zivanovic, age 53, a nephew,
(entitled to 1/5th)

being the only child and issue of Matija Zivanovic, a pre-deceased sister,

Mara Tolie, age 40, niece,
Milan Stojic, age 31, nephew,
(each entitled to 1/10th)

being all of the children and issue of Ivan Stojic, a predeceased brother,

Andja Kolovrat, age 62, a sister,
(entitled to 1/5th)

[fol. 4] all residing at Prosolac, District of Imotski, Republic of Croatia, Yugoslavia, and being residents and inhabitants of Yugoslavia.

III.

Deny Paragraph III of said petition, but allege that in fact and in law reciprocal rights of inheritance as prescribed by ORS 111.070 did exist as of the date of the decedent's death and do now exist between the United States and Yugoslavia, and that under the provisions of ORS 111.070 these answering next of kin and heirs at-law of the said Joe Stoich, deceased, are entitled to take and to receive the proceeds of this estate in the manner and shares as in Paragraph II above set forth.

IV.

Answering Paragraph IV of said petition, these answering heirs at law have no knowledge or information sufficient to form a belief as to the truth and falsity of the allegations that there are no other heirs, legatees, or devisees of said decedent legally entitled to take or receive the proceeds of this estate and therefore deny the same and also deny that the proceeds of this estate escheated to the State of Oregon under the provisions of ORS 111.070, 120.010, and 120.030.

Wherefore, these answering heirs at law of Joe Stoich, deceased, pray that the Petition of the State of Oregon for Finding and Order of Escheat be denied and dismissed and that this Court make and enter its order that the clear proceeds of this estate be distributed to these answering next of kin and heirs at law of the said Joe Stoich, deceased, as in Paragraph II above set forth.

Haas & Schwabe, Attorneys for Heirs.

Duly sworn to by Peter A. Schwabe, jurat omitted in printing.

[fol. 5]

[File endorsement omitted]

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

DEPARTMENT OF PROBATE

No. 71702

In the Matter of the Estate of MUNAREM ZEKICH, also known
as M. ZEKICH, and also known as MUHO ZEKICA, Deceased.

PETITION FOR FINDING AND ORDER OF ESCHEAT—
Filed August 9, 1954

Comes now the State of Oregon, acting by and through
the State Land Board, and alleges as follows:

I.

That it appears from the records and files in this proceeding that Munarein Zekich, also known as M. Zekich and Muho Zekica, died intestate on or about December 17, 1953, in Multnomah County, Oregon, leaving certain personal property in this state as is more fully shown by the inventory and records on file herein.

II.

That your petitioner is informed and believes and therefore alleges that certain persons residing in Yugoslavia claim to be heirs at law and next of kin of said deceased.

III.

That your petitioner is informed and believes and therefore alleges that there are no legal heirs of said deceased residing in any of the United States of America or its territories.

IV.

That under the provisions of ORS 111.070 the right of aliens not residing in the United States or its territories

to take either real or personal property or the proceeds thereof in this state, by succession or testamentary disposition, depends upon proof by such non-resident aliens of [fol. 6] the existence of such reciprocal rights as are set forth in said section 111.070.

V.

That pursuant to the provisions of ORS 111.070 and related statutes the estate of the said Munarem Zekich situated in this state has escheated to the State of Oregon.

Wherefore, your petitioner prays for an order:

1. That Munarem Zekich, also known as M. Zekich and Muho Zekica, died on December 17, 1953, in Multnomah County, Oregon, intestate without legal heirs capable of inheriting or taking the proceeds of his estate;
2. That the clear proceeds derived from said estate situated in this state became the property of the State of Oregon on the date of the death of said deceased;
3. That the administrator of said estate deliver to the State Land Board of Oregon for payment into the common school fund of this state the clear proceeds of the estate of this deceased situated in this state.

Robert Y. Thornton, Attorney General, Catherine Zorn, Assistant Attorney General, Attorneys for State Land Board.

Duly sworn to by F. C. Deckebach, jurat omitted in printing.

[fol. 8]

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

DEPARTMENT OF PROBATE

No. 71702

In the Matter of the Estate of
MUHAREM ZEKICH, Deceased.

ANSWER OF HEIRS TO PETITION OF THE STATE OF OREGON FOR
FINDING AND ORDER OF ESCHEAT—Filed November 4, 1954

Come now Habiba Turkovic, Dzedja Popovac, Lutvo Zekic, Ibro Zekic, Sefko Muradbasic, Dika Muradbasic, Murta Brkic, Melka Zekic, Jasminka Zekic and Rajka Zekic, by Branko Karadzole, Consul General of Yugoslavia at San Francisco, California, their consular representative and attorney in fact, by Peter A. Schwabe, of Haas & Schwabe, their and his attorneys, and for their answer to the Petition of the State of Oregon for Finding and Order of Escheat, filed herein admit, deny and allege as follows:

I.

Admit Paragraph I of said petition.

II.

Admit Paragraph II of said petition, and allege that they are all of the next of kin and heirs at law of the said Muharem Zekich, deceased, their ages, relationships and shares of inheritance being as follows:

Habiba Turkovic, aged 63 years, sister
entitled to 1/7th

Dzedja Popovac, aged 60 years, sister
entitled to 1/7th

Lutvo Zekic, aged 57 years, brother
entitled to 1/7th

Ibro Zekic, aged 54 years, brother
entitled to 1/7th

Sefko Muradbasic, aged 53 years, nephew
Dika Muradbasic, aged 40 years, niece
each entitled to 1/14th

being all of the children and issue of Djulsa Muradbasic, a predeceased sister.

Murta Brkic, aged 42 years, nephew
entitled to 1/7th

being the only child and issue of Nadjla Mehmedbasic, a predeceased sister.

Melka Zekic, aged 21 years, niece
 Jasmina Zekic, aged 19 years, niece,
 Rajka Zekic, aged 17 years, niece,
 each entitled to 1/21st

being all of the children and issue of Safet Zekic, a pre-
 [fol. 9] deceased brother all of said heirs residing in and
 being nationals of Yugoslavia.

III.

Admit Paragraph III of said Petition.

IV.

Admit Paragraph IV of said Petition.

V.

Deny Paragraph V of said Petition, but allege that in fact and in law reciprocal rights of inheritance as prescribed by ORS 111.070 did exist as of the date of the decedent's death and do now exist between the United States and Yugoslavia, and that under the provisions of ORS 111.070 these answering next of kin and heirs at law of the said Muharem Zekich, deceased, are entitled to take and receive the proceeds of this estate in the manner and shares as in Paragraph II above set forth.

Wherefore, these answering heirs at law of Muharem Zekich, deceased, pray that the Petition of the State of Oregon for Finding and Order of Escheat be denied and dismissed and that this Court make and enter its order that the clear proceeds of this estate be distributed to these answering next of kin and heirs at law of the said Muharem Zekich, deceased, as in Paragraph II above set forth.

Haas & Schwabe, Attorneys for Heirs.

Duly sworn to by Peter A. Schwabe, jurat omitted in printing.

[fol. 11]

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

DEPARTMENT OF PROBATE

No. 71-316

In the Matter of the Estate of
MARION BEROSH, Deceased.

Transcript of Proceedings of November 4, 1954

Hon. James W. Crawford, Judge, without a jury.

APPEARANCES:

Claimants appearing by Haas & Schwabe (by Mr. Peter A. Schwabe).

The State of Oregon appearing by Hon. Robert Y. Thornton, Attorney General of the State of Oregon (by Miss Catherine Zorn, Deputy).

[fol. 12] Direct examination.

By Mr. Schwabe:

Mr. Schwabe: May I sit over here, your Honor? The witness is hard of hearing.

The Court: Yes.

By Mr. Schwabe:

Q. Will you state your full name and also your official title and residence to the court?

A. Sinisa Kosutic, my name is.

Q. What is your official position and title?

A. I am consul of Yugoslavia in San Francisco.

Q. Does the San Francisco consulate general have official consular jurisdiction of Oregon?

A. Yes.

Q. I think it has jurisdiction of eleven western states.

A. Yes; of the eleven western states.

Q. How long have you been in this country?

A. I have been over four and a half years.

Q. During those four and a half years have you been consul of Yugoslavia in San Francisco?

A. Yes, all the time.

Q. I understand that there is a consul general at the head of the office and then there are consuls that have various duties in the consulate. Is that correct?

A. Yes.

Q. Would you tell us what your functions and duties are [fol. 13] at the consulate general?

A. I am head of the legal section of the consulate general.

Q. In your capacity as the head of the legal section of the consulate general, what type work do you do, or what sort of cases do you have under your jurisdiction?

A. Mostly inheritance cases, mostly.

Q. Well now, how long have you been in the diplomatic or consular service of Yugoslavia?

A. I have been since 1945.

Q. Would you tell us something of your education and [fol. 14] background; of what schools or universities you are a graduate and what subjects you studied?

A. I graduated from law school in Belgrade, Yugoslavia, in 1934 and since that time until the beginning of the war I practiced law.

Q. You are a practicing lawyer; and where?

A. In Belgrade.

Q. I don't think you have given the name of the university from which you graduated in law.

A. It is the university—Belgrade University.

Q. Now you were graduated in law in 1934 and practiced until 1939. Is that when the war broke out?

A. Until 1941.

Q. 1941?

A. Yes.

Q. And you have been in the consular diplomatic service of Yugoslavia since the end of the war in 1945?

A. Since the end of the war, yes.

[fol. 15] Q. Mr. Kosutic, are you familiar with a branch of the Yugoslavia government which has the title of the Commission for the Interpretation of the Laws of the Peoples Assembly of the Federal Peoples Republic of Yugoslavia? Are you familiar with that?

A. Yes, I am.

Q. Can you tell us briefly what the function is of this Commission, what they do, what their duties are? Their purpose?

[fol. 16] A. Their purpose is to interpret our law, to clarify some law question which is not clear enough.

Q. If I am not leading, I might ask you this: Is there a commission of your government to which questions of law are addressed and they issue clarifying statements of the law—a declaration of what the law of Yugoslavia is on that particular point?

A. Yes.

Q. Then under the Yugoslavia law is it necessary for the Peoples Assembly, which is the parliament of Yugoslavia, to then adopt or reject the binding interpretation of the Commission?

A. Yes.

Q. Now, do you know if this Commission of which we have just been speaking has handed down any so-called binding interpretation on the question of the rights of American citizen heirs or beneficiaries to inherit from estates in Yugoslavia?

A. Yes, I am familiar with that.

(Certain documents were marked by the Clerk Claimant's Exhibits 17-A and -B for Identification.)

Q. This Claimant's Exhibit 17-A for Identification, is that a certified and authenticated copy of the binding interpretation issued on August 3, 1953, by the Commission for the Interpretation of the Laws of the Peoples Assembly?

A. Yes.

Q. And referring to Claimant's Exhibit 17-B, is that, then, the adoption of the binding interpretation by the Peoples Assembly of Yugoslavia?

A. Yes, it is.

[fol. 17] Q. Dated November 3, 1953?

A. Yes.

Q. To your knowledge was this binding interpretation to which these two exhibits pertain, was that in full force and effect all during the month of December, 1953?

A. Yes, it was in effect.

Q. Is it still in effect at this time?

A. Yes, it is still in effect.

Q. Now, Mr. Kosutic, from your background as a law graduate of Yugoslavia, as a practicing attorney in Yugoslavia, and your nine years of service in the consular and diplomatic service of your country, do you say that the United States citizens residing here in the United States, have the right to take real and personal property and the proceeds thereof from estates in Yugoslavia, either as heirs at law, or as beneficiaries under a will, upon the same terms and conditions as inhabitants and citizens of Yugoslavia?

A. Yes.

Q. Is there any discrimination between—as to rights of inheritance in real or personal property, either as heirs at law or under a will, between American citizens and Yugoslavia citizens?

A. No, there is no—any discrimination.

Q. Now, do citizens of the United States who have a right of inheritance from estates in Yugoslavia, do they have the right to receive, by payment to them within the United States or its territories, money originating from estates of persons dying in Yugoslavia?

A. Yes, they have.

[fol. 18] Q. Upon the subject of enjoyment of the inheritance: Does the Yugoslavia government, when inheritance funds come from estates in the United States to heirs or beneficiaries in Yugoslavia, does the Yugoslavia government in any way confiscate that money or any portion of it?

A. Yugoslavia does not have any right to confiscate, sir, or to deduct inheritance which is going from the United States to Yugoslavia, to Yugoslavia heirs.

Q. That doesn't quite answer the question. I didn't ask you whether the Yugoslavia government had any right to do it; I am asking you do they do it?

A. They don't do that.

Q. They don't do that. Do the Yugoslavia heirs or beneficiaries of inheritances from the United States, do they receive the benefit or use or control of the money or the property from estates in the United States, without confiscation in whole or in part by the Yugoslavia government?

A. They do.

Q. Tell me whether any—does the Yugoslavia government levy any taxes of any kind against inheritance money coming from the United States and going to Yugoslavia?

A. Not at all. If taxes were paid here in this country, then the Yugoslavia government does not tax inheritances.

Q. Do they take anything whatsoever away from the inheritance moneys which go from the United States to Yugoslavia beneficiaries?

A. Nothing.

[fol. 19]

Portland, Oregon,
November 5, 1954.
9:30 A.M.

SINISA KOSUTIC, a witness on behalf of the Claimant, resumed the witness stand and, having been previously sworn, further testified as follows:—

Mr. Schwabe: Your Honor, may I have the privilege of asking the witness a few questions, please?

The Court: Yes.

Direct examination.

By Mr. Schwabe (Continued):

Q. Mr. Kosutic, you testified yesterday that you have been at the San Francisco consulate general of Yugoslavia since May, 1950. Is that right?

A. Since April, 1950.

Q. April, 1950. But the consulate was officially opened in May, 1950?

A. Yes.

Q. Now, in the course of your duties, have any documents passed through your hands or through the consulate general, wherein American heirs or beneficiaries to estates in Yugoslavia have waived or relinquished their rights of inheritance?

A. Yes; many such documents passed through our office. I can't recall exactly, but every month we get such documents where American citizens just relinquish their shares to their relatives in Yugoslavia.

Q. Can you give us an estimate of about how many it is per month or per week or per year, so we get some idea of how many of these cases there are?

[fol. 20] A. We get every month—I can't say for sure—but six, seven, eight cases.

Q. That would be about a hundred or so a year?

A. Very close to 100 a year.

Q. What are these documents that you are talking about? Just tell the court exactly what they are and the reason for them.

A. It is a kind of document in which American citizens waive their shares to the—to their relatives in Yugoslavia, because they don't want it. They are in a much better economic situation here in this country. They want to help their brothers and sisters in the old countries.

Q. So these are relinquished, where they relinquish their inheritance to estates in Yugoslavia to their relatives in the old country?

A. Yes.

Q. And in effect they say, "We don't want our inheritances from over there."

A. Yes.

Q. You say there are close to about 100 a year of those?

A. Yes, I am sure.

Q. And that is in your jurisdiction, which covers the eleven western states?

A. Yes, our jurisdiction.

[fol. 21] Q. Now you testified to a binding interpretation, which is one of the exhibits here, and I would like to have

you explain to the court, if you will, what a binding interpretation is and how it comes about? What is the basis for it, for a binding interpretation?

A. Under the Yugoslavia constitution and law, a commission for the interpretation of the law was established, with the purpose to interpret federal laws.

Q. This commission to interpret federal laws, then, has a basis in the organic law of Yugoslavia?

A. Yes.

Q. Tell us—and speak to the court, please. Turn towards the court and speak to the court—tell us what, tell us how the thing works and how this binding interpretation in evidence here, how that came about and what the legal effect of it is.

A. A request for interpretation of laws may come from the Peoples Deputy, or by Committee of the House, or by [fol. 22] the Federal Supreme Court, and this request is submitted to the Commission, and after the Commission confirms the request, then the House or Assembly must confirm this binding interpretation, must ratify this binding interpretation; and from that moment, from that date, it is a law in Yugoslavia which is binding on all the judges, all officials of the government, and, therefore, the foreign exchange control officials.

Q. Now, then, if the binding interpretation, which is Claimant's Exhibit 17-A for Identification here, if that is admitted into evidence by the court here, if that binding interpretation shows that full reciprocal rights of inheritance are due American citizen heirs or legatees, then are all judges or public officials, for instance, those that manage foreign funds control, national bank officials, etc., are they all required and compelled to follow and act in accordance with the binding interpretation?

A. Yes; they have to follow the binding interpretation.

Q. Now I would like to refer you to this Exhibit 4 that has been admitted in evidence, which is the note by your secretariat of state for foreign affairs, to the embassy of the United States in Belgrade, your note, that is, the Yugoslavia note is 515370/53, dated October 21, '53, and is in answer to the American note No. 1368, dated May 21, 1953, I would like to call your attention to the following words:

"In connection with Point 3 of the above mentioned position, the Secretariat wishes to point out that according to Yugoslav foreign exchange regulations, an application for the permit of a free transfer of all monetary means should be submitted in each individual case. The Secretariat wishes also to stress, that these regulations concerning foreign exchange are not, in contradiction with the Convention of 1881, since the claims of American citizens for the transfer of proceeds of the sale of their property and their goods in general are settled favorably by the competent authorities pursuant to paragraph 3, Art. II of the Agreement of 1881." Now, relating this language in this note to the remittances of inheritance funds out of estates in Yugoslavia to American citizen heirs or beneficiaries, what is the purpose or effect of this language?

A. The purpose of this language is to show that the government of Yugoslavia grants, guarantees payment to American citizens of their inheritances without any exception and discretion—or administrative discretion.

Q. Then as I understand it, by this note, the Yugoslav government has assured our government that as far as inheritance moneys coming from Yugoslavia to American citizen heirs or beneficiaries are concerned, they have the right to have that money remitted to them, and the Yugoslav government will see to it that it is remitted. Is that right?

A. Yes, that is right. They have absolute right to get this money here.

[fol. 23a] Cross examination.

By Miss Zorn:

[fol. 24] Q. I believe you mentioned that the Yugoslavian constitution could be amended by law. Will you please explain?

A. Mr. Schwabé corrected me, and he was right. It isn't amended; it is a law which was brought under the constitution; it is constitution law.

Q. Would such a law then affect the constitution?

A. This law does explain the development, economical and political development, in Yugoslavia.

Mr. Schwabe: May I make a statement, your Honor? It is a little irregular, but we have this law here in the English translation. It was enacted in January, 1953. I would be very happy to offer it, because it is a law which reorganized the structure of the Yugoslav government, it isn't a constitutional amendment. The constitution that is in here is the constitution, but this is a sort of reorganization of the Yugoslav government from its evolution in 1945 to 1953.

The Court: It is available for inspection?

Mr. Schwabe: Yes, it is right there and we will be very happy to leave it here.

By Miss Zorn:

Q. In other words, a law of this kind would be read together with the constitution?

A. I don't understand.

[fol. 25] Q. A law of this kind, such as you mentioned, would be read together and applied together with the constitution?

A. Yes.

Q. If such a law were different from the provisions of the constitution, such as this revision you mentioned, that, then, would supersede the constitution to that extent, wouldn't it?

A. Yes.

Q. Does Yugoslavia have any law other than statutory laws?

A. We have statutory laws.

Q. Do you have any other laws that the court applies which are not statutory laws?

A. No, we don't have.

Q. In our country we have some laws which we refer to as common law. Does Yugoslavia have anything of that type, or are you familiar with what we have?

A. Yes, I am familiar. We don't have those type of law.

[fol. 26]

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

No. 71316

In the Matter of the Estate of
MARION BEROSH, Deceased.

Excerpts From Proceedings of March 20 and April 1, 1957

[fol. 27] Direct examination.

By Mr. Schwabe:

Q. Mr. Temer, would you state your name, residence, and title or official position.

A. My name is Sava Temer. I am consul of Yugoslavia at the consulate general of Yugoslavia in San Francisco.

Q. And referring to Plaintiff's Exhibit No. 25, which is a copy of an exequatur issued in your name by the President on June 24, 1955, are you the Sava Temer mentioned in this exhibit?

A. That is right. I am the Sava Temer to whom this exequatur has been issued.

Q. And is that exequatur in full force and effect today? Do you still hold that office?

A. That exequatur is still in full force and effect today.

Q. Mr. Temer, would you please tell us when and where you were born and briefly your scholastic career, and then go on into the—your career in the service of the Yugoslav government.

A. I was born in Yugoslavia in Zrenjanin in 1911. I have studied elementary schools, high schools, and then went to the University of Belgrade, where I graduated at law school in 1936. Having graduated in the law school, [fol. 28] I went to the District Court at Zrenjanin where I have been practicing for something above one year, and then I went to a private attorney where I have been practicing up to the war.

After the war I entered the civil service and I am now official of the Yugoslav government in the Secretariat of State for Foreign Affairs of Yugoslavia, and I have been there working in the department of the legal advisor to the Secretariat of State for Foreign Affairs up to the time when I have been transferred to San Francisco as a consul of Yugoslavia in San Francisco.

Q. When did you go to San Francisco?

A. I went to San Francisco in 1955.

Q. And would you tell us more specifically the length and time of your service in the office of the legal advisor of the Secretariat for Foreign Affairs.

A. Excuse me. The time?

Q. Yes, the time. How long you were there.

A. I have been working in the legal advisor's office approximately something above three years, I think.

Q. And would you tell us briefly what the nature of your work and duties were in that position.

A. In the legal advisor's office of the Secretariat of State for Foreign Affairs we have been mostly concerned with legal problems affecting my country, that is, Yugoslavia, and the different foreign countries which we are having [fol. 29] diplomatic and other relations. There were mostly problems of international treaties involved.

Q. Prior to your work in the legal advisor's office to the Secretary for Foreign Affairs, what work did you do in the government service?

A. I have been working prior to that in the office of the President of Yugoslavia, and in that capacity I was sent then to Germany, where I spent four years attached to the United States occupation forces in Germany.

Q. What degree in law did you receive upon your graduation from the University of Belgrade Law School?

A. Well, we do have one degree there which is enabling a man graduating from that school to practice law. I do not know how that would compare to the American grades.

Q. Now I will ask you if you have had an opportunity to study and have studied the deposition of Kiril, K-i-r-i-l, Jaszenko, J-a-s-z-e-n-k-o, whose deposition was taken as a witness for the attorney general of Oregon, and which is

Exhibit 24 in this record? Have you had an opportunity to study that deposition?

A. I have read a copy of the deposition made by Mr. Jaszenko.

Q. Are you quite thoroughly familiar with that deposition?

A. I think I am familiar with it.

[fol. 30] Q. * * * Now next on Page 9, Mr. Jaszenko refers—it's on our Page 4; at the bottom of our Page 4—Mr. Jaszenko refers to an order concerning the amounts and procedure for sale of foreign instruments of payment to privileged persons of October 31, 1952.

Q. * * * Are you familiar, Mr. Temer, with that order?

A. Yes. I know of the order issued and signed on October 31, 1952.

[fol. 32] Q. Very well. Now, have you studied not only the original but—well, yes, have you studied the original text of that order and are you familiar with it?

[fol. 33] Q. Now would you tell us briefly and without too much detail what subjects that order covered and what the purpose of that order was.

A. This is a special order issued by the Yugoslav Government covering, I would say, out of pocket expenses up to a value of three thousand dinars for various specifically mentioned needs of Yugoslav nationalists and foreigners residing in Yugoslavia.

[fol. 34] Q. Then is there any reference, Mr. Temer, in this order or has this order any application whatsoever to inheritance funds?

A. This order does not deal at all with inheritance, with the transmittal of inheritance funds.

Q. So this, as far as the flow of inheritance funds from Yugoslavia out of an estate in Yugoslavia to a heir or beneficiary in the United States, this order would have no application?

A. No, this order would not apply at all to the transmittal [fol. 35] of inheritance funds due to American citizens out of Yugoslavia.

[fol. 36] Q. I think that treaty is in evidence here as Claimant's Exhibit No. 9.

I am handing you here a copy of that Article 2 which has been received in evidence as part of that treaty, and just ask you to read that Paragraph 3 into the record.

A. They shall likewise be at liberty to export freely the proceeds of the sale of their property, and their goods in general, without being subjected to pay any other or higher duties than those payable under similar circumstances by natives or by the subjects of the most favored state.

Q. Now, how does Yugoslavia and your government construe that treaty as being applicable to the transmission of inheritance funds out of the states in Yugoslavia to United States citizens?

A. That treaty has been so construed by our—by Yugoslavia that American citizens do have the full right to export freely the proceeds of their inheritances.

[fol. 37] (Whereupon document was marked Claimant's Exhibit No. 26 for identification.)

Q. Now I ask you, to your knowledge, Mr. Temer, is there any official act of any instrumentality of the Yugoslav Government which confirms in official documentary form the fact that Yugoslavia does as a matter of policy and right permit the transfer of inheritance funds out of the Yugoslavia states to American heirs or beneficiaries?

A. Yes, I know.

Q. Now I hand you Claimant's Exhibit No. 26, which is a certificate by the Federal People's Assembly or of the Federal Executive Council. Would you please examine that and explain to us what that document is.

A. When there was reconstruction of the governmental form in Yugoslavia, the previously existing Ministry of Finance was replaced by Secretariat for Budget, and as previously, the Ministry of Finance was responsible for issuing the licenses for transmittal of foreign currency

funds to American citizens. When this reconstruction of the government took place, there was in the official gazette publicized an order of the Federal Executive Council of the Federal People's Assembly of Yugoslavia stating that the Federal Secretary of State for General Administration and Budget will have the authority to issue orders for the transmittal from Yugoslavia to the United States of funds [fol. 38] realized upon liquidation of decedents' estates, and the Federal Secretary of State for Administration and Budget shall continue to order the transmittal from Yugoslavia to the United States of funds realized from the liquidation of decedents' estates upon establishing that such transmittal devolves from an inheritance due to a citizen of the United States, and that such transmittal has been requested by the party within three years from the effective date of the decree of distribution.

Q. Now, in practical effect, what does that establish as to the right of an American citizen heir-beneficiary out of an estate in Yugoslavia; to have his inheritance funds transmitted and paid to him in American dollars in this country?

A. This means that an American citizen does have the right to have his inheritances transmitted from Yugoslavia to the United States in so far as he can prove that he is a United States citizen and that the funds which he wants to have transmitted are devolving from a decedent's estate.

Q. What is the date of that instrument that you have just referred to, Exhibit 26?

A. The date of this instrument is—just a moment.

Q. In the upper left-hand corner, isn't it?

A. The official gazette, the date is the 14th of October, 1955.

Q. I am sorry, Mr. Temer, but on my copy of this the date shows as November 28, 1955. Was that the date when this [fol. 39] certificate was issued or—

A. (Interposing) No, that is the date when it came effective because there is one date when it was signed, the other date when it was publicized in the official gazette, and then when it comes into effect.

Q. It was publicized in the gazette on October 26, 1955?

A. That's correct.

Q. And I notice it says that it becomes effective as of

the date of publication in the official gazette. Would that not make the effective date 1955?

A. It became effective October 26, 1955.

[fol. 49] Q. Is this instrument, Exhibit No. 26, did that create a new right or simply change jurisdiction from one government bureau to the other and vest the new government bureau with the right to continue the transmittal of those inheritances?

A. This order does not constitute a new right. The reason for bringing this order was to effect the transfer of jurisdiction from the previously existent Ministry of Finance to the subsequently established Secretariat of State for Budget, and that is legible from the word of this certificate where it says that it shall continue to do so. So that is not a law which came—which was enacted in '55. The transfer of jurisdiction became effective in '55 but not the right for transmittal.

Q. Now, this direction here changing the jurisdiction from the secretariat of finance to the secretariat for the general administration and budget for the transmittal of inheritances, inheritance funds, to the United States, did that exist in December, 1953?

A. That right has existed in 1953, December, too.

Q. Disregarding the day of the month, both Joe Stoich and Muharem Zekich died in December, 1953. Was this right to the remittance of inheritance funds from Yugoslavia to American heirs or beneficiaries in existence at that time?

A. It was in existence at that time.

[fol. 41] Q. Now, you have testified that an American citizen, heir, beneficiary would have the right to have jewelry, heirlooms, personal things in personal property inherited from an estate transmitted to him in the United States. Will you tell us on what basis that right rests.

A. That right again rests on Paragraph 3 of Article 2 of the treaty which we have with the United States from 1881.

Q. Now, Mr. Teiner, you have repeatedly mentioned the treaty of 1881. Are you familiar with the decision of the California Supreme Court in Arbulich's Estate which was handed down in May 25, 1953, and is reported at 257 Pacific Second 433? Are you familiar with that decision?

A. I am familiar with the Supreme Court decision in the Arbulich case.

Q. I would like to read you what the court said in that case as to their interpretation of the treaty and the article to which you refer. . .

It says: "Appellant contends, nevertheless, that the provisions of Article II of a treaty entered into in 1881 between [fol. 42] the United States and the Kingdom of Serbia, 22 Stat. 964 (of which the present Republic of Yugoslavia is the successor government) and certified by the Secretary of State of the United States as remaining in full force and effect between this country and Yugoslavia, are applicable and controlling in appellant's favor on the issue of reciprocity. It may be noted that the first paragraph of Article II seemingly treats only of 'citizens of the United States in Serbia (Yugoslavia) and Serbian (Yugoslav) subjects in the United States,' rather than, as is the situation in the present case, of a United States citizen who dies in the United States and leaves property to a Yugoslav subject who is in Yugoslavia, and therefore is not here applicable. Even if we assume its applicability in that respect, however, the rights granted are only those given by each of the contracting nations 'to the subjects of the most favoured nation,' and do not purport to equal the rights given or guaranteed by each of the contracting nations to its own citizens. Consequently the treaty provisions do not establish the reciprocal rights required by the Probate Code."

Now, does the government of Yugoslavia interpret this treaty to which reference is made here as requiring the physical existence and residence in Yugoslavia of an American citizen in order to receive the benefits of this treaty?

A. This treaty has in Yugoslavia never been construed so [fol. 43] so that the term of citizen would be narrowed down to the term of a resident. This treaty has been carried out in Yugoslavia or referred to in Yugoslavia only as referring

to United States citizens, generally, regardless of whether they are residing in Yugoslavia or not in Yugoslavia.

Q. Now, immediately following what I have just read to you comes the question—this is at the bottom of Page 12, our Page 6 (reading:).

To what extent would inheritances or legacies originating from estates of persons dying outside of Yugoslavia be received by Yugoslavian heirs or legatees residing in Yugoslavia?

And I will read you part of the answer (reading:)

There are no restrictions prohibiting a Yugoslav heir from receiving property due to him from the estates of persons dying outside of Yugoslavia. However, when received, this property is subject to all the existing limitations imposed by the present Yugoslav government on private property, such as nationalization, confiscation, expropriation, land reform, restrictions of management, and the like.

Now, when inheritance such as, for instance, the brothers and sisters of Stoich in Yugoslavia which—to this estate which we are directly concerned here, when that money reaches Yugoslavia, is it subjected to any sort of nationalization, confiscation, expropriation?

A. When an inheritance is transmitted to Yugoslavia [fol. 44] that inheritance is not subject to any restrictions, and the heir, the party concerned, does have the full right to enjoy it. It is not subject to nationalization, to—or to other restrictive measures.

Q. Are there any taxes, inheritance taxes or any sort of taxes in Yugoslavia, to which inheritance funds to any heirs are subjected on arrival from the United States?

A. No, inheritance funds from heirs of Yugoslavia would not be subject to inheritance taxes.

Q. What are the charges of your consulate or the charges of any other agency of the Yugoslav government by way of deductions from the funds which you receive on behalf of Yugoslav heirs or beneficiaries from an American estate?

A. The respective shares of the Yugoslav heirs in estates coming from abroad, specifically from the United States, would be subject to pay only such fees as the local court here would design, as the local taxes would provide

for, as the local attorneys' fees would provide for, and as would provide the consulate taxes, if the estate is going through our consulate. Our consulate fees are one per cent of that portion—of the net estate, and all the rest is passing over without any diminution to the party concerned.

Q. Is there any confiscation in whole or part?

May I have the Volume 1 of the Code, please?

The Court: Which? Volume 1?

[fol. 45] Mr. Schwabe: Volume 1 of the Code.

(Court hands Mr. Schwabe requested volume.)

Mr. Schwabe: Thank you, sir.

Q. Now I am going to read to you subsection (c) of Section 111.070 of Oregon Revised Statutes, which is the statute under which we are conducting this case. (c), this is one of the conditions under which foreign heirs or beneficiaries may inherit: upon proof that such foreign heirs, distributees, devisees or legatees may receive the benefit, use or control of money or property from estates of persons dying in this state without confiscation; in whole or in part, by the governments of such foreign countries.

Now, do the people, after they receive their money over there from American inheritance, do they have the free use and benefit of that money?

A. They will have the free use of that money, and this money is not due to be confiscated in whole or in part.

Q. Are there any restrictions other than the ordinary restrictions of any society governed by law as to the enjoyment or the use of the money that they receive from such an inheritance?

A. They may enjoy and use the money according to the regular laws of the country, as in any other country.

Q. Now, in his answer, going on, this answer to the same question, Mr. Jaszenko refers to certain land reform laws of [fol. 46] August 23, '45, March 18, 1946, and November 26, 1947, providing for certain limitations in the quantities of land that a person may hold. Do those restrictions apply—well, a person can't inherit land from America in Yugoslavia, so I will skip that.

A. No, that cannot happen that somebody inherits land from abroad.

[fol. 47] Q. I think just before the recess we covered the matter of nationalization in this long answer of Mr. Jaszenko's. The next is land reform. That, of course, could not, land reform laws in Yugoslavia, could not possibly have any effect.

A. Not at all. Nobody can transfer an inherited piece of land abroad to Yugoslavia.

Q. Next he refers to expropriation and mentions a law of April 4, 1947, . . .

Now are you familiar with that law?

[fol. 48] A. Yes. But that is again concerning expropriation of real estate, and if somebody in Yugoslavia would inherit property from the United States, he cannot possibly transmit a house or land from the United States to Yugoslavia. Otherwise, it is a law of expropriation as if, for instance, here in the United States you would like to cut a highway through a portion of somebody's property, that portion may be expropriated for whatever public use it is designed.

Q. Is that what you are speaking of is the law of eminent domain?

A. Yes.

[fol. 49] Q. Now, Mr. Temer, there has been discussion heretofore of the rate of exchange for inheritance funds passing from the United States to Yugoslavia at the rate of three hundred dinars. Now will you tell us if that rate is still in existence or if it has been changed in any respect.

A. The official exchange rate of three hundred dinars to one dollar is still in full force and effect.

Q. Now, at what rate are the inheritance funds paid out to Yugoslavia beneficiaries?

A. The inheritance funds coming from the United States [fol. 50] to Yugoslavia are transmitted to the official exchange rate of three hundred dinars per one dollar—

Q. (Interposing) Just a moment. By whom is that rate fixed?

A. That is the rate fixed by the International Monetary Fund.

Q. Okay.

A. And above those three hundred dinars, which is the official exchange rate, the recipient is entitled to a premium of a hundred per cent. That means that the recipient would receive practically six hundred dinars per one dollar.

Q. And can you tell us when, at least approximately, that premium of one hundred per cent went into effect?

A. I do not know exactly the date, but I think it was somewhere by the end of '54.

Q. Subsequent to the dates of death of which we are here concerned?

A. Yes. Before that date the recipients were entitled to coupons above the exchange rate, and those coupons were used for buying rationed goods in the store. But when we discontinued to have rationed goods in the store, then instead of those coupons the beneficiaries got the premiums which I have been referring to.

[fol. 50a] Cross examination.

By Miss Zorn:

[fol. 51] Q. Now, this morning Mr. Schwabe referred to the case of Arbulich's Estate. In that particular case the Foreign Exchange Control Law in effect in Yugoslavia at the time of that—of the decedent's death in this case in 1947, I believe, was quoted to—quoted in part. I wonder if I could read you part of that law and if you could tell me whether or not that law is still in effect. The case refers to the law as Section—or number 630. By virtue of Article 2 of the Resolution of November 30, 1943, on the Supreme [fol. 52] Legislative and Executive People's Representation Body of Yugoslavia as a provisional organ of the supreme people's authority in Yugoslavia and in connection with the Resolution of August 10, 1945, covering the change of

name. And then it goes on to quote the law. The title of the law is The Law Regulating Payment Transactions with Foreign Countries, in parentheses, Foreign Exchange Law. Basic Rules, Article 1:

"All financial transactions with foreign countries, as well as transactions within the country in relation to foreign countries that may affect the development of the credit balance of our country and the international value of our domestic currency (foreign exchange transactions) are subject to the control of the Federal Minister of Finance (foreign exchange control)."

And Article 2 reads as follows: "Article 2

"Primarily the following transactions are subject to control:

"(a) All transactions within the country and with foreign countries: in foreign exchange, claims and debts in foreign currency and other values in foreign currency;

"(b) All transactions with foreign countries: in domestic currency, credits and debts in domestic currency and other values in domestic currency;

"(c) All transactions with foreigners within the country, causing changes in property relations between our country and foreign countries; and * * * ." Then there are omission marks.

[fol. 53] Going on to Article 3. "Article 3

"The term 'transaction' from Articles 1 and 2 as used in this law means the transfer of values and metals and payments, it also means the establishment, cancellation and change of obligations and actual rights to values and metals, as well as changes of holders of rights and obligations."

"Article 4

"Permission must be had for transactions described in Articles 1 and 2 of this Law according to foreign exchange regulations."

"Article 5

"It is forbidden to conclude business in the country the amount of which in domestic currency is tied to gold or some foreign currency." And then there are omission marks.

"Article 6

"(1) The Federal Minister of Finance as the supreme foreign exchange authority, exercises his control over foreign exchange through:" and then there is a bracket showing various agencies and then again omission marks.

"(2) The Federal Minister of Finance regulates the limits of jurisdiction as between the foreign exchange authorities in regard to the exercising of foreign exchange control, be it by Regulations from Article 25 of this Law, or by separate decisions."

"Article 7

[fol. 54] "(1) Transactions, subject to foreign exchange control according to this Law, may be conducted only by persons and establishments authorized to do so by the competent foreign exchange authorities, unless the conduct of such business is permitted by the foreign exchange rules themselves." Then again there are omission marks.

"Article 8

"The National Bank, whenever authorized by the Federal Minister of Finance, may at any time request the holders in the country to offer for sale to the National Bank all their foreign exchange (regardless whether it be in the shape of claims in foreign currency, checks, drafts, etc.), foreign currency, foreign values and precious metals. If the National Bank decides to buy, it shall fix the terms, * * *." And then the omission marks.

"Article 12

"(1) The term 'devisa' as used in the foreign exchange regulations means a claim abroad on whatever basis, in whatever currency, regardless of the manner of disposal * * *." And then there are omission marks again.

"Article 13

"(1) The term 'foreigners' as used in this Law means all persons and corporations with permanent residence or seat abroad, regardless of citizenship of persons and ownership of enterprises.

[fol. 55] "(2) The term 'domestic persons' means all persons and corporations with permanent residence or seat within the country, regardless of citizenship of persons and ownership of enterprises." Omission marks,

"Article 16

"(1) The penalties for foreign exchange infractions are:" omission marks,

"2. Confiscation of objects or values constituting the foreign exchange infraction, in full or in part." Omission marks again.

"(2) The Federal Minister of Finance shall pronounce penalties." Then there are omission marks.

"Article 25

"The Federal Minister of Finance shall issue more detailed rules, regulations and decisions for the execution of this Law, upon consulting the National Bank."

And that's the end of the quotation in this case.

Now I realize it's difficult to follow any reading, perhaps, so if you would like to examine this and look it over, please feel free to do so.

A. I realize that this is—you have been quoting some translations of the Foreign Currency Control Law. There is a Foreign Currency Control Regulation, but you have not been quoting Article 8 of that Foreign Currency Control Regulation Law, and in Article 8 of that law it is provided that Foreign Currency Control Regulation represents those provisions of a treaty with foreign countries which concerns itself with payments, and by virtue of that provision in Article 8, whatever regulations there would be in this internal law of Yugoslavia would not apply to an American because the Treaty of 1881 in Paragraph 3, Article 2, provides that the Americans would be at liberty

to export their goods in general; and as an international treaty is the supreme law, so it is also in this very law expressed that such treaty provisions represent Foreign Currency Control Regulations. So, if I may summarize it, because of that Paragraph 3 of an international treaty, this—those provisions wouldn't apply to an American citizen.

Q. Do I understand you correctly, this provision you mentioned, is that a part of this?

A. Yes.

Q. Law or is that an extra—

A. (Interposing) That is Article 8 of the Law you have been quoting.

Q. Yes. It is not a separate amendment?

A. No, that is this law, Article 8.

Q. Now I don't recall. Did you say whether or not this law was still in effect in 1953?

A. The Foreign Currency Regulation Law with certain amendments is still in effect.

[fol. 57] Redirect examination.

By Mr. Schwabe: ✓

Q. Now, you mentioned relinquishment. Would you tell us how those relinquishments by Americans to estates in Yugoslavia, how those are occasioned, how they arise and how they operate.

A. Excuse me. I cannot understand you.

Q. The relinquishments. You spoke, in response to a question by Miss Zorn, you spoke of relinquishments by American citizens of their rights of inheritance of estates in Yugoslavia. Would you tell us how you come into play with those or what your functions are, if any, in respect to those.

A. Oh, we come in only in the capacity of authenticating a document. If you have here a United States citizen who may have a brother or a relative in Yugoslavia and he wants to relinquish his share to that—to his relative in Yugoslavia, then he draws up an affidavit to that effect and goes to a notary public. Before that notary public he signs that deed; then such a document is brought to a county

clerk for super-authentication; then it comes to our office [fol. 58] to be authenticated as well because only when such an affidavit is authenticated by those three instances may it be applicable to the court in Yugoslavia. And through that procedure we happen to know that there was a great many of cases where American citizens would relinquish their inheritance rights to the benefit of some of their relatives in the old country.

Q. Now, I believe your exequatur shows, and it's already in evidence, that the consulate general in San Francisco has jurisdiction of eleven western states, including Oregon, Washington, California, and so forth; is that right?

A. That's correct.

Q. Now, can you give us any estimate at all of how many, from your own experience since you have been at the consulate, of these relinquishments have passed through the consulate in the course of a month or a year?

A. I would say that there may be about a hundred fifty, maybe, a year.

Q. A hundred and fifty a year?

A. Yes.

[fol. 59] Q. Now, you stated in narrative form the provision of Article 8 whereby the Yugoslav Foreign Exchange Control Laws would not apply where Yugoslavia had a treaty or an international agreement with a particular foreign country.

Mr. Schwabe: Would you mark that, please.

(Whereupon a document was marked Claimant's Exhibit No. 28 for identification.)

Q. Handing you a paper marked Claimant's or Plaintiff's Exhibit 28 for identification and headed "Article 8," will you examine that and tell me what that is.

A. Yes. That is this Article 8 of the Foreign Currency Control Law which I have been referred to.

Q. Do you know who made this translation; where it came from?

A. This translation came from Yugoslavia, I believe.

Q. And this is the provision of the Foreign Exchange

Control Law which is not quoted in the Arbulich opinion which you testified to?

A. Miss Zorn did not quote that.

Q. And was this in effect in December, 1953?

A. Yes, it was in effect in 1953.

Mr. Schwabe: We would like to move for the admission in evidence for this provision of the law which Miss Zorn brought out on cross-examination. I move to have that admitted.

[fol. 60] Miss Zorn: Yes.

The Court: It is received.

(Whereupon document previously marked for identification as Claimant's Exhibit No. 28 was received in evidence and so marked.)

Q. Now just a couple of more questions here. Just supposing now we have an American citizen who has been directed to be a heir, or decreed to be a heir. Let's make it easy and say it's money. Suppose there are fifty thousand dinars in the bank in Belgrade and the court has declared an American citizen heir over here to be the heir to the estate, so the decree is entered by the court that that fifty thousand dinars is his, and supposing then he wants that money transferred to him over here, and through a representative over there or possibly directly he makes application to have that sent over here to him and he doesn't get it, either he doesn't hear any more about it or somebody tells him that it can't be done. "Sorry, but you can't get your money." If such a situation were to develop, does the American citizen heir have any rights or any remedies, any legal procedure at his disposal to enforce that right?

A. Yes. He can take redress and institute a suit, an administrative suit against that administrative official who either didn't act on his request or did not fulfill his [fol. 61] request, and he can redress that suit against such an official to the Supreme Court of Yugoslavia.

Q. Do you know of any suit in your experience, either in your government service abroad or while you have been over here, where any such a right has ever been denied and a suit brought to assert it?

A. Excuse me. Whether I know of any—

Q. (Interposing) Do you know of any case in your experience, such a right to have the money sent over here, transmitted over here, was denied and such a suit was brought?

A. I do not know of any case.

Recross examination.

By Miss Zorn:

[fol. 62] Q. Now, getting back to this Article 8 which Mr. Schwabe has here and you identified as part of the Foreign Exchange Control Law. This seems to conflict with the Article 8 which is quoted in this particular case. I was wondering if perhaps this may have been an amendment or [fol. 63] a change or something of that kind because the text of the law seems to be different than the Article 8 quoted here.

A. I do not know how this—how the text in this—in the book came to be quoted or whether that was subsequent, maybe, to that, but in 1953 the Article 8 of this Foreign Currency Exchange Law was as it is shown on this paper before you.

Q. I see. Might I ask you if the substance of this Article 8 as it appears in here was still in the Foreign Currency Exchange Law or would you be able to say offhand?

A. No, this is the Article 8 which you have before you, not what you have been reading in the book.

Q. Yes. What I was trying to bring out whether the substance of this Article 8 as appears here appears elsewhere in the Foreign Exchange Law or could you say offhand without examining the entire text?

A. I would have to examine both texts. I couldn't tell you offhand.

Q. I believe that's all.

A. But I can tell you that in 1953 this, what I have introduced now, was Article No. 8 and is today Article No. 8.

[Vol. 64]

IN THE CIRCUIT COURT OF THE STATE OF OREGON
 FOR THE COUNTY OF MULTNOMAH
 DEPARTMENT OF PROBATE

No. 71287

In the Matter of the Estate of
 JOE STOICH, Deceased.

No. 71702

In the Matter of the Estate of
 MUHAREM ZEKICH, Deceased.

CIRCUIT COURT OF LANE COUNTY, OREGON

No. 11900

In the Matter of the Estate of
 THOMAS T. PRASCEVICH, Deceased.

Washington, D. C.,
 Monday, December 12, 1955

Excerpts From Deposition of Kiril Jaszenko

Deposition of Kiril Jaszenko, called for examination pursuant to Commission to Take Deposition, dated October 13, 1955, at Suite 518 Southern Building, Washington 5, D. C., beginning at 9:00 o'clock a.m., before D. F. King, Commissioner, and Notary Public in and for the District of Columbia, and in response to interrogatories and cross-interrogatories, answered as follows:

[fol. 65] Thereupon—KIRIL JASZENKO, being first duly sworn, was examined and, in answer to interrogatories, testified as follows:

Direct interrogatories.

By Mr. King:

Q. Please tell about your academic education and legal training and background.

A. I have attended the High School in Belgrade, Yugoslavia, the Law School of the University of Belgrade, and the George Washington Law School in Washington, D. C.

Q. Of what law school or schools are you a graduate?

A. I graduated from the Law School of the University of Belgrade, Yugoslavia, in 1935 and the George Washington Law School, Washington, D. C., in 1954.

Q. What degrees do you hold?

A. I received a degree equivalent to LL.B from the Law School of the University of Belgrade, Yugoslavia, and a degree of Master of Comparative Law (American Practice), from the George Washington Law School, Washington, D. C.

[fol. 66] Q. Have you been admitted to the practice of law?

A. Yes.

Q. Where?

A. I was admitted to the practice of law in Belgrade, Yugoslavia, in 1937.

Q. How long did you practice?

A. From 1937 to 1943.

Q. Please describe your practice and legal experience.

A. From 1937 to 1942 I practiced law as a lawyer's assistant in two different law offices. From 1942 to 1943 I had my own law office in Belgrade, Yugoslavia.

Q. What is your present position?

A. I am employed as a legal analyst in the Foreign Law Section of the Law Library, Library of Congress, Washington, D. C.

Q. What are the duties and functions of your position?

A. My duties are to be familiar with the laws, legal institutions, legal literature and legal practices in Yugoslavia.

Q. How long have you held that position?

A. I have held this position since January, 1952.

Q. Are you familiar with the Yugoslavian constitution and laws?

A. Yes. As stated before, it is my particular duty to familiarize myself with the Yugoslav laws and constitution, [fol. 67] and I endeavor to do this to my best of knowledge and ability.

Q. How have you kept yourself informed?

A. I read and study the Yugoslav materials regularly received by the Library of Congress, like Yugoslav official gazettes, legal periodicals, collections of laws, collections of decisions, commentaries, and so forth.

Q. Have you done any research on foreign law?

A. Yes.

Q. Have you done any research on Yugoslavian law?

A. Yes.

Q. What research have you done?

A. The research on Yugoslav law constitutes a necessary part of my regular duties. Research on the law of other countries, especially on Soviet Russian laws, was also done by me whenever required.

Q. Have you written or published any articles on foreign law in law reviews or other publications?

A. Yes.

[fol. 68] Q. The date governing the rights of inheritance under Oregon Revised Statutes 111.070 is the date of the decedent's death which in each of these cases occurred respectively on December 6, 7 and 24, 1953. Please base your answers to the following questions on the law as it applied [fol. 69] and was in effect on those dates:

In Article 18 of the Yugoslavian Constitution it is stated:

"No person is permitted to use the right of private property to the detriment of the People's community."

What is meant by a use of private property "to the detriment of the People's community"?

A. For the purpose of better understanding of Article 18 of the Yugoslav Constitution it should be borne in mind that after World War II the Yugoslav legislature issued a decree dealing with validity of laws enacted prior to and during World War II.

The decree was amended on October 23, 1946, and pursuant to it, the laws enacted by the occupation authorities during World War II were declared non-existent, while those enacted prior to that war to have lost their legal force. However, the principles of law contained in the pre-war laws may still be applied by courts to the situations not provided for by the new legislation, if they are not in conflict with the federal Yugoslav Constitution, the Constitutions of the Yugoslav republics (states), the laws enacted by the postwar legislature, and the principles of the constitutional order of the present-day Yugoslavia.

[fol. 70] Since the field of private law, that is, property law, contracts, torts, inheritance law, and so forth, was covered very little by the new legislation, the general principles expressed in the Constitution are of utmost importance for the law-enforcing agencies in measuring the extent to which the old laws are applicable.

Article 18 of the Yugoslav Constitution represents one of such guiding principles to be taken into consideration when applying the old laws or construing the new ones.

In practical application, Article 18 of the Constitution means that property rights secured to individuals by the laws enacted prior to World War II in the spirit of the traditional concept of private property rights, may be now changed or curtailed whenever it appears that they are in conflict with the principles and policies of the present regime as understood and enforced by the respective government agencies.

In the sector covered already by the new legislation it is known as nationalization, confiscation, land reform, expropriation, restrictions on management of property, production and distribution of commodities according to a plan, fixed prices, and the like.

In the fields not yet covered by the new legislation, the curtailment or modification of the property rights develops along the same lines, that is, they may be changed or abrogated whenever the policies of the present regime so require.

[fol. 71] Q. State whether or not Yugoslavia had a foreign monetary exchange control law governing the payment of money from within Yugoslavia to persons outside of Yugoslavia as of the above mentioned dates. If so please deliver a duly authenticated copy of such law, together with certified translation thereof, to the Commissioner to be annexed as an exhibit to the deposition.

A. Yugoslavia has a number of laws, decrees, orders, regulations and instructions governing the foreign currency exchange. The translation of the Order Concerning the Amounts and Procedure for Sale of Foreign Instruments of Payment to Private Persons of October 31, 1952, which was still in effect in December 1953, is attached hereto as Exhibit 1.

[fol. 72] Q. Under what terms and conditions could payment of money be made from within Yugoslavia to persons outside of Yugoslavia?

A. Payments of money, based on private transactions and obligations, to persons outside Yugoslavia, may be made only in accordance with the terms and conditions prescribed by the order, Exhibit 1.

Q. State whether or not such payments were made as a matter of course or whether they were a matter of discretion. Please explain.

A. The wording and the spirit of the order, Exhibit 1, [fol. 73] indicate clearly that such payments are a matter of discretion and not of right. This applies particularly to Clause (h) of Section 1 of the order, Exhibit 1, which does not provide for an exactly specified situation.

[fol. 74] Q. To what extent would inheritances or legacies originating from estates of persons dying outside of Yugo-

[fol. 75] slavia be received by Yugoslavian heirs or legatees residing in Yugoslavia?

A. There are no restrictions prohibiting a Yugoslav heir from receiving property due to him from the estates of persons dying outside of Yugoslavia. However, when received, this property is subject to all the existing limitations imposed by the present Yugoslav Government on private property, such as nationalization, confiscation, expropriation, land reform, restrictions of management, and the like.

If, for example, the inherited property consists of land, it may not exceed, together with the land already in his possession, the maximum prescribed by the Law on Land Reform of August 23, 1945, as amended on March 18, 1946 and November 26, 1947, which maximum ranges from 3 to 45 hectares, depending on the category to which the heir or legatee belongs. The land in excess of the prescribed maximum may be taken away from its owner.

[fol. 76]

EXHIBIT 1

Translation from Serbo-Croatian.

On the basis of Sec. 26 of the Decree on Export and Import of Goods and Transactions in Foreign Currency ("Sluzbeni list FNRJ" No. 35/52), in agreement with the President of the Economic Council of the Government of the Federal People's Republic of Yugoslavia, I herewith issue the following:

Order

Concerning the Amounts and Procedure for Sale of Foreign Instruments of Payment to Private Persons.

1. The National Bank of the Federal People's Republic of Yugoslavia may sell foreign instruments of payment to private persons, upon examination of each individual case, in an amount not to exceed 3,000 Dinar, and in the following situations:

a) to cover small expenses needed in connection with a trip abroad, on the basis of traveling documents having a properly issued visa;

b) to cover small traveling expenses of persons in possession of foreign traveling documents, who are considered domestic residents within the meaning of provisions on foreign exchange;

c) to stateless persons leaving the country as emigrants;

d) to foreign experts who were employed by an institution or social organization, but not by a commercial enterprise, who are going on annual leave or are leaving the country permanently, provided no other proper procedure for receiving foreign instruments of payments was stipulated in the contract;

e) for the purpose of providing relief;

f) for court and other taxes;

g) to pay alimony on the basis of a final court decision, if such payment is provided for in the respective payment agreements;

h) for other similar needs not mentioned above, which will be explained in detail in the petition presented to the National Bank of the Federal People's Republic of Yugoslavia.

2. Private persons may buy from the National Bank of the Federal People's Republic of Yugoslavia foreign instruments of payment needed for education, specialized training, medical treatment and purchase of medicine, regardless of whether the entire, or only partial, amount of expenses is involved, on the basis of orders for payment issued by the republican councils, and out of the foreign currency appropriations approved to these councils.

3. The National Bank of the Federal People's Republic of Yugoslavia shall be authorized to issue technical instructions for the carrying out of this order.

4. This order shall take effect on the date of its publication in the "Sluzbeni list Federativne Narodne Republike Jugoslavije".

No. 8074

Belgrade, October 31, 1952

p.t.o.

[fol. 77]

Ministar of Finance of the FPRY
Milentije Popovic

I, the undersigned Kiril JASZENKO, have been employed as a legal analyst in the Foreign Law Section of the Library of Congress, Washington, D. C., since January 15, 1952. I also was a practicing lawyer in Belgrade, Yugoslavia, and I have a thorough knowledge of the Serbo-Croatian and English languages.

I hereby certify that, to the best of my knowledge, the above is a correct and true translation of the Order Concerning the Amounts and Procedure for Sale of Foreign Instruments of Payment to Private Persons.

/s/ KIRIL JASZENKO

Subscribed and sworn to before me this
8th day of Dec. 1955. at Washington, D.C.

/s/ OLIVE M. SELTZER
Notary public

My Commission Expires Aug. 31, 1956

(Seal)

[fol. 79]

CLAIMANT'S EXHIBIT 3

No. 4368

The Embassy of the United States of America presents its compliments to the Secretariat of State for Foreign Affairs of the Federative People's Republic of Yugoslavia and has the honor to inform the Secretariat that the Embassy has received from the Department of State at Washington a communication enclosing copies of two letters

directed to the Department by the Law Offices of Stahlman and Cooper and Blase A. Bnonpane, 920 Walter P. Story Building, 610 South Broadway, Los Angeles 14, California, who represent the estate of a decedent who at the time of his death was a resident of Los Angeles, California, and who left heirs in Yugoslavia. The letters referred to read in part as follows:

1. "Will you kindly advise us whether there is any treaty between the United States and Yugoslavia whereby the heirs have reciprocal rights of inheritance. In other words, do we have an arrangement with Yugoslavia wherein there is a reciprocal right on the part of citizens of the United States to take real and personal property originating from the estates of persons dying in Yugoslavia upon the same terms and conditions as the residents of Yugoslavia would have.

2. "In further reference to our letter to you, dated June 10, 1952, and to your kind reply thereto of July 10, 1952, signed by Francis E. Flaherty, Assistant Chief, Division of Protective Services, enclosing copies of communications from the Republic of Yugoslavia dated October 9, 1948 and July 22, 1949, in connection with the above estate, we would like to inquire of there have been any changes or revisions in the laws mentioned above as affecting the reciprocal rights of inheritance of citizens of the United States and of the Republic of Yugoslavia.

3. "In your letter of July 10, 1952, you stated that there was some question at that time, from an analysis of the decree of March 20, 1948, as to whether a citizen of the United States could inherit real property in Yugoslavia. We would appreciate any further advice on this subject as we notice that the aforementioned [fol. 80] decree of Yugoslavia restricts the inheritance of real property by alien heirs to those who are also natural heirs of the deceased. According to the judicial interpretation of American courts, natural heirs include only sons and daughters and parents as distinguished from collateral heirs which comprise brothers and sisters, etc. Does the Yugoslav law adhere the this

same interpretation or does it consider all heirs as natural heirs regardless of the degree of consanguinity?"

It is assumed by the Embassy, in view of the first two paragraphs of Article II of the Convention of Commerce and Navigation which is now in force between the United States and Yugoslavia and which was signed with Serbia on October 2-14, 1881, and in view of a communication (copy attached) which the Supreme Court of the Federative People's Republic of Yugoslavia directed to the Ministry of Justice of the FPRY on August 18, 1949, that American citizens have full rights of inheritance in the FPRY. It does not appear, however, in view of Note No. 530240 (copy attached) which the Yugoslav Ministry of Foreign Affairs directed to the Embassy on October 9, 1948, that American citizens are "at liberty to export freely the proceeds of the sale of their property and their goods in general" to the United States in accordance with the third paragraph of Article II of the Convention of Commerce and Navigation referred to above.

With regard to No. 2 above, it appears that there have been no changes or revisions, since October 9, 1948, in the laws and regulations concerning the rights of inheritance in Yugoslavia of citizens of the United States or in the restrictions, referred to in the perultimate paragraph of the Ministry's note of October 9, 1948, on their "liberty to export freely the proceeds of the sale of their property and their goods in general" to the United States.

With regard to No. 3 above, it does not appear that the Embassy's files contain any information which would enable it to answer the question posed therein.

It would be greatly appreciated if the Secretariat of State for Foreign Affairs would be so kind as to inform the Embassy whether the latter may properly inform the [fol. 81] Department of State that, at the present time, American citizens:

1. May freely inherit property in Yugoslavia.
2. May freely sell inherited property and other property.

3. Are not "at liberty to export freely in the form of dollars the proceeds of the sale of their property and their goods in general."

It would also be appreciated if the Secretariat would supply the Embassy with the information concerning natural heirs requested in No. 3 above.

The Embassy avails itself of this opportunity to renew to the Secretariat of State for Foreign Affairs the assurance of its high consideration.

American Embassy,
Belgrade, May 21, 1953.

[fol. 82]

CLAIMANT'S EXHIBIT 4

No. 515370/53

The Secretariat of State for Foreign Affairs presents its compliments to the Embassy of the United States of America and, with reference to the Embassy's Note No. 1368 of May 21, 1953, has the honor to communicate:

In accordance with the Convention of Commerce and Navigation concluded between the Kingdom of Serbia and the United States on October 2/14, 1881, and which is in force still today between the Federal People's Republic of Yugoslavia and the United States, as well as according to earlier information about the rights of the citizens of the United States in the FPRY with regard to inheritance, the Secretariat wishes to inform the Embassy that American citizens

1. May freely inherit property in Yugoslavia under the same conditions as Yugoslav citizens,

2. May sell inherited and other property under the same conditions as Yugoslav citizens, and

3. That the Yugoslav Government, pursuant to paragraph 3, Article II of the Agreement of 1881, settles favorably all the claims of American citizens, regarding the transfer of proceeds of the sale of their real property and their goods in general, to the United States.

In connection with the above exposed in paragraph 1 and 2, and with the view to clarifying some points when analysing the Decree of March 20, 1948, concerning the above-mentioned Agreement of 1881, the Federal Executive Council brought a binding interpretation of Art. II, on August 3, 1953, Official Gazette of the FPRY, No. 31 of August 12, 1953, reading as follows:

"On the basis of Art. 69, paragraph 1 of the Constitutional Law, and in connection with Art. 2, paragraph 1 of the Procedure, the Commission for the Interpretation of Laws of the National Assembly of the FPRY gives a binding interpretation of Art. II of the Convention of Commerce and Navigation, concluded between Serbia and the United

AMERICAN EMBASSY

B e l g r a d e

[fol. 83] States on October 2/14, 1881, and of Art. 5 of the Agreement on Pecuniary Claims of the United States and its citizens, concluded between the United States and the FPRY on July 19, 1948.

On the basis of Art. 5 of the Agreement on Pecuniary Claims of the United States and their Citizens, concluded between the United States and the FPRY on July 19, 1948, and the provision of Art. II of the Convention of Commerce and Navigation, concluded between Serbia and the United States on October 2/14, 1881, which is still in force, American citizens have the same rights as the citizens of the FPRY, with regard to the way and object of acquisition and disposition of personal as well as real property. Consequently, they have the right to inherit real property on the territory of the FPRY under the same conditions as the citizens of the FPRY, on the basis of the law, as well as on the basis of a last will, regardless of the provision of Art. 3, paragraph 1, of the Decree on the Control of Real Property, of March 20, 1948.

No. 76, Beograd, August 3, 1953, Commission for the Interpretation of Laws of the National Assembly of the FPRY.

There have been no changes in the position regarding the order of succession as exposed in the communication

of the Supreme Court of the FPRY directed to the Ministry of Justice of the FPRY on August 18, 1949.

In order to clarify this point, the Secretariat would like to inform that the Yugoslav law does not know a special kind of natural heirs, but only the order of succession on the basis of the law, or inheritance by testament.

The order of succession on the basis of the Law is exposed in the explanation of the Supreme Court of the FPRY.

In connection with point 3 of the above mentioned position, the Secretariat wishes to point out that according to Yugoslav foreign exchange regulations, an application for the permit of a free transfer of all monetary means should be submitted in each individual case. The Secretariat wishes also to stress, that these regulations concerning foreign exchange are not in contradiction with the [fol. 84] Convention of 1881 since the claims of American citizens for the transfer of proceeds of the sale of their property and their goods in general are settled favorably by the competent authorities pursuant to paragraph 3, Art. II of the Agreement of 1881.

The Secretariat of State for Foreign Affairs avails itself of this opportunity to renew to the Embassy of the United States of America the assurance of its high consideration.

Beograd, October 21, 1953.

[fol. 85]

CLAIMANT'S EXHIBIT 5

I, Frane Frol, Minister of Justice of the Federal People's Republic of Yugoslavia, hereby certify that I am a Member of the Government of the Federal People's Republic of Yugoslavia, entrusted with and having custody of the State seal as well as of the original Constitution and laws of the Federal People's Republic of Yugoslavia and who is in charge of their implementation. I hereby attest that according to the Law and practice of the courts in the Federal People's Republic of Yugoslavia the citizens of the United States of America may inherit in the Federal People's Republic of Yugoslavia personal property under the same conditions and same juridical titles (law, will etc.)

as the citizens of the Federal People's Republic of Yugoslavia. As to real property the citizens of the United States of America may inherit in the Federal People's Republic of Yugoslavia by law on the grounds of Art. 5 of the Decree [fol. 86] on the control of real property of March 20, 1948 and by will on the grounds of diplomatic reciprocity in accordance with Art. 5 of the Agreement between the United States of America and the Federal People's Republic of Yugoslavia of July 19, 1948, both by national treatment and by the most favored nation clause.

Done in Belgrade, July 13, 1949.

/s/ FRANE FIOL

[fol. 87]

CLAIMANT'S EXHIBIT 6

SUPREME COURT
of the
FEDERAL PEOPLE'S REPUBLIC
OF YUGOSLAVIA

Su.No. 505/49
Belgrade, August 18/ 1949.

To the

MINISTRY OF JUSTICE OF FPRY

BELGRADE

With reference to your letter No. 235/49 of August 16, 1949, and in reply to questions set forth therein: what is the judiciary practice in the territory of the FPRY, and particularly in the territory of the PR of Serbia and PR of Croatia, regarding inheritance right, and whether the courts recognize to foreign citizens the right of inheritance on the basis of the Law, particularly to citizens of the United States of America, and whether the legal rule from paragraph 423 of the Serbian Civil Code of 1844 is in force—we state the following:

In the procedure and settlement of inheritance cases the courts are guided by Art. 4 of the Law pertaining to non-validity of legal prescriptions promulgated prior to April 6, 1941 and during the enemy occupation. On the basis of

this prescription courts are authorized to apply even now certain rules of the laws which were in force up to April 6, 1941, insofar as they are not contrary to the Constitution of the FPRY, to the Constitutions of the peoples republics, to the laws and other prescriptions in force which were promulgated by the competent organs of the new state, as well as to the principles of the constitutional system of the Federal People's Republic of Yugoslavia and her republics. [fol. 88] Courts in the territory of the FPRY, consequently also courts in the territory of the people's republic of Serbia and territory of the people's republic of Croatia, from 1945 have applied and are applying today the following regulations:

1) Regarding the right of inheritance

One may inherit on the basis of the law or a will. If the deceased did not leave a will the following persons are entitled, on the basis of the law, to inherit:

In the first place the sons, daughters and spouse of the deceased on an equal basis. The descendants of deceased sons and/or daughters inherit by right of representation. If there are no such close relatives, then the estate will be inherited by the parents of the deceased on an equal basis. If there is no living parent then his share is inherited by his sons and daughters, brothers and sisters of the deceased, on an equal basis, and if any of the brothers and/or sisters died before the deceased their share goes to his/her sons and daughters.

If none of the above mentioned relatives are living, then the estate is inherited by the grandfather and grandmother on the father's side, and the grandfather and the grandmother on the mother's side on an equal basis, and if any grandparent is not living then his share is inherited by his sons and daughters on an equal basis. But if some of these sons or daughters died before the deceased then his/her share will be inherited by his/her sons and daughters.

2) Regarding the question of inheritance by foreign citizens

Foreign citizens inherit in the FPRY under the condition of reciprocity, consequently citizens of the United States of America as well.

The legal rule from paragraph 423 of the Serbian Civil Code; which is in force, states:

"When, how, and which foreign citizens can inherit goods [fol. 89] of a Serbian citizen, is based on the political relations with the foreign states and according to them inheritances will be determined and decisions brought."

Death to Fascism—Liberty to the People!

President,

Vitomir Petrovic (signed)

Seen by the Ministry of Foreign Affairs as a true copy of the text in the Serbo-Croat language.

The fee of Din. gratis has been received according to article 5/1 of the Tariff Law.

No 54127

February 1, 1950

Belgrade

Chief of Legalization

(Tadic Radivoje) signed

Seal of the
Ministry of Foreign Affairs

This is to certify that the above is a true translation from the Serbo-Croat language into English.—

Counselor of the Embassy,

/s/ MIRKO SARDELIC

Mirko Sardelic.

[Seal]

YUGOSLAV EMBASSY
WASHINGTON

OFFICIAL.

A.Br.2129/50

Washington, D. C.,

February 7, 1950.

[fol. 90]

CLAIM EXHIBIT 7

AGREEMENT BETWEEN THE GOVERNMENTS OF
THE UNITED STATES OF AMERICA AND THE
FEDERAL PEOPLE'S REPUBLIC OF YUGO-
SLAVIA REGARDING PECUNIARY CLAIMS OF
THE UNITED STATES AND ITS NATIONALS

The Government of the United States of America and the Government of the Federal People's Republic of Yugoslavia, being desirous of effecting an expeditious and equitable settlement of claims of the United States of America and of its nationals against Yugoslavia, have agreed upon the following articles:

Article 1

(a) The Government of Yugoslavia agrees to pay, and the Government of the United States agrees to accept, the sum of \$17,000,000 United States currency in full settlement and discharge of all pecuniary claims of the Government of the United States against the Government of Yugoslavia, other than those arising from Lend-Lease and civilian supplies furnished as military relief, arising between September 1, 1939 and the date hereof, and in full settlement and discharge of all claims of nationals of the United States against the Government of Yugoslavia on account of the nationalization and other taking by Yugoslavia of property and of rights and interests in and with respect to property, which occurred between September 1, 1939 and the date hereof.

.

[fol. 91]

Article 5

The Government of Yugoslavia agrees to accord to nationals of the United States lawfully continuing to hold, or hereafter acquiring assets in Yugoslavia, the rights and privileges of using and administering such assets and the income therefrom within the framework of the controls and regulations of the Government of Yugoslavia, on conditions not less favorable than the rights and privileges accorded

to nationals of Yugoslavia, or of any other country, in accordance with the Convention of Commerce and Navigation between the United States of America and the Prince of Serbia, signed at Belgrade, October 2-14, 1881.¹

[fol. 92]

Article 11

The Government of Yugoslavia agrees to give sympathetic consideration to applications for transfers to the United States of deposits in banks of Yugoslavia and other similar forms of capital owned by nationals of the United States, where the amounts involved are small but which, in view of the circumstances, are of substantial importance to the persons requesting the transfers.

Article 12

The present Agreement shall come into force and effect upon the date of signature.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto by their respective Governments, have signed the present Agreement.

DONE at Washington in duplicate this nineteenth day of July, 1948.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

G C MARSHALL
Secretary of State
of the United States of America

FOR THE GOVERNMENT OF THE FEDERAL PEOPLE'S REPUBLIC OF YUGOSLAVIA:

OBREN BLAGOJEVIC
Deputy Minister of Finance
of the Federal People's Republic of Yugoslavia

¹ Treaty Series 319; 22 Stat. 963.

[fol. 93]

CLAIMANT'S EXHIBIT 9

SERBIA--COMMERCIAL RELATIONS.

CONVENTION

BETWEEN

THE UNITED STATES OF AMERICA AND SERBIA,
FOR FACILITATING AND DEVELOPING COMMERCIAL RELATIONS,

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

A PROCLAMATION.

Whereas, a Treaty between the United States of America and His Highness the Prince of Serbia, for facilitating and developing the commercial relations established between the two countries, was concluded and signed at Belgrade by their respective plenipotentiaries on the 2/14 day of October, 1881, the original of which treaty, being in the English and Serbian languages, is word for word as follows:

[The following is the English version.]

TREATY OF COMMERCE BETWEEN THE UNITED STATES
OF AMERICA AND SERBIA.

The United States of America and His Highness the Prince of Serbia, animated by the desire of facilitating and developing the commercial relations established between the two countries, have determined with this object to conclude a treaty, and have named as their respective plenipotentiaries, viz:

The United States of America, Eugene Schuyler, their chargé d'affaires and consul-general at Bucarest;

His Highness the Prince of Serbia, Monsieur Ched. Mijatovich, His Minister of Foreign Affairs, Grand Officer of His Order of Takova, &c., &c., &c.,

Who, after having communicated to each other their respective full powers, found in good and due form, have agreed upon and concluded the following articles:

[fol. 94]

ARTICLE II.

In all that concerns the right of acquiring, possessing or disposing of every kind of property, real or personal, citizens of the United States in Serbia and Serbian subjects in the United States, shall enjoy the rights which the respective laws grant or shall grant in each of these states to the subjects of the most favored nation.

Within these limits, and under the same conditions as the subjects of the most favored nation, they shall be at liberty to acquire and dispose of such property, whether by purchase, sale, donation, exchange, marriage contract, testament, inheritance, or in any other manner whatever, without being subject to any taxes, imposts or charges whatever, other or higher than those which are or shall be levied on natives or on the subjects of the most favored state.

They shall likewise be at liberty to export freely the proceeds of the sale of their property, and their goods in general, without being subjected to pay any other or higher duties than those payable under similar circumstances by natives or by the subjects of the most favored state.

ARTICLE III.

Merchants, manufacturers, and trades people in general of one of the two contracting countries traveling in the other, or sending thither their clerks and agents—whether with or without samples—in the exclusive interest of the commerce or industry that they carry on, and for the purpose of making purchases or sales or receiving commissions, [fol. 95] shall be treated with regard to their licenses, as the merchants, manufacturers and trades people of the most favored nation.

ARTICLE IV.

Citizens of the United States in Serbia and Serbian subjects in the United States shall be reciprocally exempted from all personal service, whether in the army by land or by sea; whether in the national guard or militia; from billeting; from all contributions, whether pecuniary or in kind, destined as a compensation for personal service; from all forced loans, and from all military exactions or requisitions. The liabilities, however, arising out of the possession of real property and for military loans and requisitions to which all the natives might be called upon to contribute as proprietors of real property or as farmers, shall be excepted.

They shall be equally exempted from all obligatory official, judicial, administrative or municipal functions whatever.

They shall have reciprocally free access to the courts of justice on conforming to the laws of the country, both for the prosecution and for the defence of their rights in all the degrees of jurisdiction established by the laws. They can employ in every case advocates, lawyers and agents of all classes authorized by the law of the country, and shall enjoy in this respect, and as concerns domiciliary visits to their houses, manufactories, warehouses or shops, the same rights and advantages as are or shall be granted to the natives of the country, or to the subjects of the most favored nation.

.

[fol. 95a]

ARTICLE VII.

The products of the soil or of the industry of Serbia which shall be imported into the United States of America, and the products of the soil or of the industry of the United States which shall be imported into Serbia, and which shall be destined for consumption in the country, for warehousing, for re-exportation or for transit, shall be subjected to the same treatment, and shall not be liable to other or higher duties than the products of the most favored nation.

.

[fol. 96] Done in duplicate at Belgrade this 2-14 day of October, 1881.

EUGENE SCHUYLER. [SEAL.]

CH. MIJATOVICH. [SEAL.]

And whereas the said treaty has been duly ratified on both parts, and the respective ratifications were exchanged at Belgrade on the 15th ultimo:

Now, therefore, I, Chester A. Arthur, President of the United States of America, have caused the said treaty to be made public, to the end that the same, and every clause and article thereof, may be observed and fulfilled with good faith by the United States and the citizens thereof.

[fol. 97] In witness whereof I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the city of Washington this twenty-seventh day of December, in the year of our Lord one thousand eight hundred and eighty-two, and of the Independence of the United States of America the one hundred and seventh.

CHESTER A. ARTHUR.

[SEAL.]

By the President:

FRED'K T. FRELINGHUYSEN,
Secretary of State.

[fol. 97a]

CLAIMANT'S EXHIBIT 10

ARTICLES OF AGREEMENT OF THE INTERNATIONAL MONETARY FUND

[fol. 98]

ARTICLE IV

PAR VALUES OF CURRENCIES

[fol. 99] Section 3. *Foreign exchange dealings based on parity*

The maximum and the minimum rates for exchange transactions between the currencies of members taking place within their territories shall not differ from parity.

- (i) in the case of spot exchange transactions, by more than one percent; and
- (ii) in the case of other exchange transactions, by a margin which exceeds the margin for spot exchange transactions by more than the Fund considers reasonable.

Section 4. *Obligations regarding exchange stability*

(a) Each member undertakes to collaborate with the Fund to promote exchange stability, to maintain orderly exchange arrangements with other members, and to avoid competitive exchange alterations.

(b) Each member undertakes, through appropriate measures consistent with this Agreement, to permit within its territories exchange transactions between its currency and the currencies of other members only within the limits prescribed under Section 3 of this Article. A member whose monetary authorities, for the settlement of international transactions, in fact freely buy and sell gold within the limits prescribed by the Fund under Section 2 of this Article shall be deemed to be fulfilling this undertaking.

[fol. 100]

ARTICLE VI

CAPITAL TRANSFERS

Section 1. *Use of the Fund's resources for capital transfers*

(a) A member may not make net use of the Fund's resources to meet a large or sustained outflow of capital, and the Fund may request a member to exercise controls to prevent such use of the resources of the Fund. If, after receiving such a request, a member fails to exercise appropriate controls, the Fund may declare the member ineligible to use the resources of the Fund.

(b) Nothing in this Section shall be deemed

- (i) to prevent the use of the resources of the Fund for capital transactions of reasonable amount required for the expansion of exports or in the ordinary course of trade, banking or other business, or

- (ii) to affect capital movements which are met out of a member's own resources of gold and foreign exchange, but members undertake that such capital movements will be in accordance with the purposes of the Fund.

[fol. 101] Section 3. *Controls of capital transfers*

Members may exercise such controls as are necessary to regulate international capital movements, but no member may exercise these controls in a manner which will restrict payments for current transactions or which will unduly delay transfers of funds in settlement of commitments, except as provided in Article VII, Section 3 (b), and in Article XIV, Section 2.

ARTICLE VII

SCARCE CURRENCIES

Section 1. *General scarcity of currency*

If the Fund finds that a general scarcity of a particular currency is developing, the Fund may so inform members and may issue a report setting forth the causes of the scarcity and containing recommendations designed to bring it to an end. A representative of the member whose currency is involved shall participate in the preparation of the report.

[fol. 102] Section 3. *Scarcity of the Fund's holdings*

(a) If it becomes evident to the Fund that the demand for a member's currency seriously threatens the Fund's ability to supply that currency, the Fund, whether or not it has issued a report under Section 1 of this Article, shall formally declare such currency scarce and shall thenceforth apportion its existing and accruing supply of the scarce currency with due regard to the relative needs of members, the general international economic situation and any other pertinent considerations. The Fund shall also issue a report concerning its action.

(b) A formal declaration under (a) above shall operate as an authorization to any member, after consultation with the Fund, temporarily to impose limitations on the freedom of exchange operations in the scarce currency. Subject to the provisions of Article IV, Sections 3 and 4, the member shall have complete jurisdiction in determining the nature of such limitations, but they shall be no more restrictive than is necessary to limit the demand for the scarce currency to the supply held by, or accruing to, the member in question; and they shall be relaxed and removed as rapidly as conditions permit.

ARTICLE VIII

GENERAL OBLIGATIONS OF MEMBERS

Section 1. *Introduction*

In addition to the obligations assumed under other articles of this Agreement, each member undertakes the obligations set out in this Article.

Section 2. *Avoidance of restrictions on current payments*

(a) Subject to the provisions of Article VII, Section 3 (b), and Article XIV, Section 2, no member shall, without the approval of the Fund, impose restrictions on the making of payments and transfers for current international transactions.

[fol.103] (b) Exchange contracts which involve the currency of any member and which are contrary to the exchange control regulations of that member maintained or imposed consistently with this Agreement shall be unenforceable in the territories of any member. In addition, members may, by mutual accord, cooperate in measures for the purpose of making the exchange control regulations of either member more effective, provided that such measures and regulations are consistent with this Agreement.

[fol. 107]

ARTICLE XIV

TRANSITIONAL PERIOD

Section 2. *Exchange restrictions*

In the post-war transitional period members may, notwithstanding the provisions of any other article of this Agreement, maintain and adapt to changing circumstances (and, in the case of members whose territories have been occupied by the enemy, introduce where necessary) restrictions on payments and transfers for current international transactions. Members shall, however, have continuous regard in their foreign exchange policies to the purposes of the fund; and, as soon as conditions permit, they shall take all possible measures to develop such commercial and financial arrangements with other members as will facilitate international payments and the maintenance of exchange stability. In particular, members shall withdraw restrictions maintained or imposed under this Section as soon as they are satisfied that they will be able, in the absence of such restrictions, to settle their balance of payments in a manner which will not unduly encumber their access to the resources of the Fund.

Section 4. *Action of the Fund relating to restrictions*

Not later than three years after the date on which the Fund begins operations and in each year thereafter, the Fund shall report on the restrictions still in force under Section 2 of this Article. Five years after the date on which the Fund begins operations, and in each year thereafter, any member still retaining any restrictions inconsistent with Article VIII, Sections 2, 3, or 4, shall consult the Fund as to their further retention. The Fund may, if it deems such action necessary in exceptional circumstances, make representations to any member that conditions are favorable for the withdrawal of any particular restriction, or for the general abandonment of restrictions, inconsistent with the provisions of any other articles of

this Agreement. The member shall be given a suitable time to reply to such representations. If the Fund finds that the member persists in maintaining restrictions which are [fol. 105] inconsistent with the purposes of the Fund, the member shall be subject to Article XV, Section 2 (a).

Section 5. *Nature of transitional period*

In its relations with members, the Fund shall recognize that the post-war transitional period will be one of change and adjustment and in making decisions on requests occasioned thereby which are presented by any member it shall give the member the benefit of any reasonable doubt.

ARTICLE XV

WITHDRAWAL FROM MEMBERSHIP

Section 2. *Compulsory withdrawal*

(a) If a member fails to fulfill any of its obligations under this Agreement, the Fund may declare the member ineligible to use the resources of the Fund. Nothing in this Section shall be deemed to limit the provisions of Article IV, Section 6, Article V, Section 2, or Article VI, Section 1.

(b) If, after the expiration of a reasonable period the member persists in its failure to fulfill any of its obligations under this Agreement, or a difference between a member and the Fund under Article IV, Section 6, continues, that member may be required to withdraw from membership in the Fund by a decision of the Board of Governors carried by a majority of the governors representing a majority of the total voting power.

[fol. 106]

ARTICLE XIX

EXPLANATION OF TERMS

In interpreting the provisions of this Agreement the Fund and its members shall be guided by the following:

[fol. 107] (i) Payments for current transactions means payments which are not for the purpose of transferring capital, and includes, without limitation:

- (1) All payments due in connection with foreign trade, other current business, including services, and normal short-term banking and credit facilities;
- (2) Payments due as interest on loans and as net income from other investments;
- (3) Payments of moderate amount for amortization of loans or for depreciation of direct investments;
- (4) Moderate remittances for family living expenses.

The Fund may, after consultation with the members concerned, determine whether certain specific transactions are to be considered current transactions or capital transactions.

[fol. 108]

CLAIMANT'S EXHIBIT 17-A

I, Veljko Zekovic, Secretary of the Federal Executive Council, hereby confirm that I am a member of the Federal Executive Council, entrusted with and having custody of the original Constitution and Laws of the Federal People's Republic of Yugoslavia. I hereby attest that the attached text of the Binding interpretation of Article 2 of the Treaty of Commerce and Navigation between Serbia and the United States of America, concluded on October 24, 1881, and of Article 5 of the Agreement between the Governments of the United States of America and the Federal People's Republic of Yugoslavia regarding the Pecuniary Claims of the United States of America and its Citizens, concluded on July 19, 1948, is a true, complete and correct copy of the original, and that this Binding interpretation is still now in full force and effect.

Done with my hand and under the official seal of the Federal Executive Council, in the City of Beograd, on November 20, 1953.

Secretary
of the Federal Executive
Council

sgd Veljko Zekovic.

[fol. 109] According to Article 69, paragraph 1 of the Constitutional Law, and in connection with Article 2, point 1 of the Proceedings, the Commission for the Interpretation of the Laws of the People's Assembly of the Federal People's Republic of Yugoslavia gives the

BINDING INTERPRETATION
OF ARTICLE II OF THE TREATY OF COMMERCE AND NAVIGATION BETWEEN SERBIA AND THE UNITED STATES OF AMERICA, CONCLUDED ON OCTOBER 2/14 1881, AND ARTICLE 5 OF THE AGREEMENT BETWEEN THE GOVERNMENTS OF THE UNITED STATES OF AMERICA AND THE FEDERAL PEOPLE'S REPUBLIC OF YUGOSLAVIA REGARDING PECUNIARY CLAIMS OF THE UNITED STATES OF AMERICA AND ITS CITIZENS, CONCLUDED ON JULY 19, 1948.

According to Article 5 of the Agreement between the Governments of the United States of America and the Federal People's Republic of Yugoslavia regarding Pecuniary Claims of the United States of America and its Citizens, concluded on July 19, 1948, and the provisions of Article II of the Treaty of Commerce and Navigation between Serbia and the United States of America, concluded on October 2/14, 1881, which is still in force, citizens of the United States of America are equal with citizens of the Federal People's Republic of Yugoslavia in regard to the manner and object of acquiring and disposing of both personal and real property. Accordingly, they have the right to inherit real property in the territory of the Federal People's Republic of Yugoslavia under the same con-

ditions as citizens of the Federal People's Republic of Yugoslavia on the basis of the Law as well as on the basis of a Testament, regardless of the provision of Article 5, paragraph 1 of the Decree regarding the Control of the transfers of Real Property of March 20, 1948.

No. 76

August 3, 1953

Beograd

Commission for the Interpretation of the Laws of the People's Assembly of the Federal People's Republic of Yugoslavia

Secretary,
sgd Rista Antunovic,
People's Deputy

President
sgd Dr. Maks Snuderl,
People's Deputy

That the within is a true copy
certifies:

sgd Nikola Srzentic

[fol. 110]

CLAIMANT'S EXHIBIT 17-B

I, Veljko Zekovic, Secretary of the Federal Executive Council, hereby confirm that I am a member of the Federal Executive Council, entrusted with and having custody of the original Constitution and Laws of the Federal People's Republic of Yugoslavia. I hereby attest that the attached text of the Decision of the People's Assembly of the Federal People's Republic of Yugoslavia regarding the confirmation of binding interpretations of the Commission for the Interpretation of the Laws of the Federal People's Republic of Yugoslavia, enacted in the period between May 20 and September 7, 1953, is a complete and correct copy of the original.

Done with my hand and under the official seal of the Federal Executive Council, in the City of Beograd, on November 20, 1953.

Secretary
of the Federal Executive
Council

sgd Veljko Zekovic.

[fol. 111]

DECISION

OF THE PEOPLE'S ASSEMBLY OF THE FEDERAL PEOPLE'S REPUBLIC OF YUGOSLAVIA CONFIRMING THE BINDING INTERPRETATIONS OF THE COMMISSION FOR THE INTERPRETATION OF THE LAWS OF THE PEOPLE'S ASSEMBLY OF THE FPRY, ISSUED IN THE PERIOD BETWEEN MAY 20th AND SEPTEMBER 7th, 1953.

According to Article 60 paragraph 3 of the Constitutional Law, the People's Assembly of the FPRY, at its XXVIIIth joint meeting held at the VI regular session (Second Assembly) on September 8, 1953, reached a decision which reads as follows:

The binding interpretations of the Commission for the Interpretation of the Laws of the People's Assembly of the FPRY issued in the period between May 20 and September 7, 1953, are confirmed as follows:

1) Binding interpretations of Articles 19 and 23 of the Law regarding Disabled War Veterans;

2) Binding interpretation of Article 27, paragraph 1 of the Law regarding the Agricultural Land Fund of People's Property and the Attribution of Land to Agricultural Organizations;

3) Binding interpretation of Article 1, paragraph 1 of the Law regarding the Office of the Solicitor General;

4) Binding interpretation of Article II of the Treaty of Commerce and Navigation between Serbia and the United States of America, concluded on October 2/14, 1881, and Article 5 of the Agreement between the Governments of the United States of America and the Federal People's Republic of Yugoslavia regarding Pecuniary Claims of the

United States of America and its Citizens, concluded on
July 19, 1948.

No. 281

November 3, 1953

Beograd

People's Assembly
of the
Federal People's Republic of Yugoslavia

President
of the Assembly of Nationalities
sgd Josip Vidmar

President
of the Federal Assembly
sgd Vladimir Simic

That the within is a true copy
certifies:

sgd Nikola Srzentic

[fol. 112]

CLAIMANT'S EXHIBIT 19

I, Veljko Zekovic, Secretary of the Federal Executive Council, hereby confirm that I am a member of the Federal Executive Council, entrusted with and having custody of the original Constitution and Laws of the Federal People's Republic of Yugoslavia. I hereby attest that the attached text of Article 2 paragraph 1 of the Proceedings of the Commission for the Interpretation of the Laws is a true, complete and correct copy of the original, that this regulation has been in effect since its publication in the Official Gazette of the Federal People's Republic of Yugoslavia on April 8, 1953, and that is still now in full force and effect.

Done with my hand and under the official seal of the Federal Executive Council, in the City of Beograd, on November 20, 1953.

Secretary
of the Federal Executive
Council

sgd Veljko Zekovic.

Art. 2

The Commission for the Interpretation of the Laws:

- 1) gives binding interpretations of the federal laws;
- 2) examines the proposals for the ascertainment of the conformity of the federal law and law of the republic with the federal Constitution and gives its opinion;
- 3) gives its opinion in cases where an act of the Federal Executive Council is not in conformity with the law, and
- 4) gives its opinion in cases of disagreement between the Executive Council of a people's republic and the Federal Executive Council concerning the suspensibility of acts of the Executive Council of a people's republic.

That the within is a true copy
certifies

sgd Nikola Srzentic

CLAIMANT'S EXHIBIT 20

I, Veljko Zekovic, Secretary of the Federal Executive Council, hereby confirm that I am a member of the Federal Executive Council, entrusted with and having custody of the original Constitution and Laws of the Federal People's Republic of Yugoslavia. I hereby attest that the attached text of Article 69 of the Constitutional Law pertaining to the Bases of the Social and Political Order of the Federal People's Republic of Yugoslavia and the Federal Organs of Authority is a true, complete and correct copy of the original, that this Article has been in effect since the promulgation of the mentioned Constitutional Law in the National Assembly of the Federal People's Republic of Yugoslavia on July 13, 1953, and that still now is in full force and effect.

Done with my hand and under the official seal of the Federal Executive Council, in the City of Beograd, on November 20, 1953.

Secretary
of the Federal Executive
Council

sgd Veljko Zekovic.

[fol. 115] CONSTITUTIONAL LAW
PERTAINING TO THE BASES OF THE SOCIAL AND POLITICAL
ORDER OF THE FEDERAL PEOPLE'S REPUBLIC OF YUGOSLAVIA
AND THE FEDERAL ORGANS OF AUTHORITY

Art. 69

The Commission for the Interpretation of the Laws is entitled to give binding interpretations of federal laws.

The proposal for the interpretation of laws may be submitted by: any people's deputy, a Committee of a House, the Federal Executive Council, the Federal Supreme Court and the Executive Council of the people's republic.

The Commission submits to the competent Houses the binding interpretation for subsequent approval.

The Commission examines the proposals submitted to the Assembly for ascertainment of the conformity of the federal law and the law of the republic with the federal Constitution and submits a report to the Houses together with its opinion.

The Commission for the Interpretation of the Laws consists of nine members, who are elected by the Assembly at the joint sessions of both Houses from the ranks of the people's deputies.

The Commission for the Interpretation of the Laws remains on duty also after the dissolution of the Assembly until the election of a new commission.

That the within is a true copy
certifies

sgd Nikola Srzentic.

[fol. 116]

CLAIMANT'S EXHIBIT 26

Federal People's Republic of Yugoslavia
Federal People's Assembly
Federal Executive Council
No. 592
November 28, 1955
Beograd

On the request of the Consulate General of the Federal People's Republic of Yugoslavia in San Francisco, the Secretariat for Juridical Affairs issues the following

CERTIFICATE

In the Federal People's Republic of Yugoslavia is in force the Decision of the Federal Executive Council concerning the transfer of authority relative to the issuance of orders for transmittal of inheritances from the Federal People's Republic of Yugoslavia to United States of America, published in the Official Gazette October 26, 1955,—number 47 of the Federal People's Republic of Yugoslavia. The Decision reads as follows:

1). The Federal Secretary of State for General Administration and Budget has authority to issue orders for the transmittal from the F.P.R. of Yugoslavia to the U.S.A. of funds realized upon liquidation of decedents' estates.

2). The Federal Secretary of State for General Administration and Budget shall continue to order the transmittal from the F.P.R. of Yugoslavia to the U.S.A. of funds realized from the liquidation of decedents' estates upon establishing that such transmittal devolves from an inheritance due to a citizen of the U.S.A. and that such transmittal has been requested by the party within three years from the effective date of the decree of distribution.

3). This Decision becomes effective as of the day of its publication in the Official Gazette of the F.P.R. of Yugoslavia.

The Head of Department
signed Mihailo Vrazalic

[fol. 117]

CLAIMANT'S EXHIBIT 28.

Article 8

The term "foreign exchange regulations" refers to the provisions of the present Law, to the provisions of the Rules for the implementation of the present Law, to the orders, instructions and decisions of the Ministry of Finance of the FPR of Yugoslavia, made on the basis of the present Law, to all the regulations relating to the control of imports and exports enacted by the Minister of Foreign Trade of the FPR of Yugoslavia, as well as to the provisions of agreements with foreign countries which are concerned with payments.

[fol. 118]

STATE'S EXHIBIT 30

Federal People's Republic
of Yugoslavia

FEDERAL PEOPLE'S ASSEMBLY

FEDERAL EXECUTIVE COUNCIL
No. 332

13 maj 1956—Beograd

SECRETARIAT FOR JUSTICE

On the application of the General Consulate of the Federal People's Republic of Yugoslavia in San Francisco, the Secretariat for Justice of Federal Executive Council issues the following

CERTIFICATE

In the Federal People's Republic of Yugoslavia are in force:

I

The Law regulating foreign payments (Foreign Exchange Law) published in the "Official Gazette of the FPR of Yugoslavia No. 86 of October 23, 1946," corrected and changed on the 8th October 1951 ("Official Gazette of the

FPR of Yugoslavia" No. 46/1951) and on the 26th January 1954 ("Official Gazette of the FPR of Yugoslavia" No. 5/1954) which reads as follows:

L A W

REGULATING FOREIGN PAYMENTS (FOREIGN EXCHANGE LAW)

General provisions

Article 1

All foreign payments, as well as all foreign exchange [fol. 119] operations in the country and abroad likely to affect the balance of payments situation of our country and the international value of the domestic currency, are under the control of the Ministry of Finance of the FPR of Yugoslavia (foreign exchange control).

Article 2

The following operations are subject to special control:

- a) All business transactions in the country and abroad involving foreign currency, claims and debts in foreign currency;
- b) all business transactions with foreign countries involving domestic currency, claims and debts in domestic currency, and other values expressed in domestic currency;
- c) all business transactions with foreigners in the country involving an alteration of property relations between our country and foreign countries; and
- d) all domestic and foreign trade in precious metals (gold and platinum, with the platinum group: osmium, iridium, palladium, ruthenium, rhodium) in all forms, with the exception of products made of these metals.

Article 3

Legal transactions binding at least one of the parties to the actions enumerated in Articles 1 and 2 of the present Law are not valid, if not authorized by a permission issued [fol. 120] in conformity with Article 10 of the present law.

Article 4

It is prohibited to transact, in the country, any business in gold or to engage in business operations which would link the amount of the obligation in domestic currency to gold or any foreign currency.

Article 5

The term "transaction" under Articles 1 and 2 the present Law refers also, in addition to payments and to the transfer of valuables and precious metals, to the establishment, cancellation and alteration of obligations and actual rights to valuables and precious metals, as well as to the change of hands of the said rights and obligations.

Article 6

1. The term "foreign exchange", under the foreign exchange regulations, refers to all claims abroad, due under any count and in any currency, regardless of the manner of disposal (by check, bill of exchange, money-order, cable, order, telephone order, etc.).

2. The term "currency" under the foreign exchange regulations, refers to all sorts of effective foreign currency, except foreign gold coins, which are, under the present Law, considered as precious metal.

3. The term "values", under the foreign exchange regulations, refers to all sorts of securities.

[fol. 121]

Article 7

1. The term "foreigner", under the present Law, refers to all physical and legal persons residing or having their seat abroad, regardless of the nationality of the physical person.

2. The term "domestic persons" refers to all physical and legal persons residing or having their seat in the country, regardless of the nationality of the physical persons.

3. In cases under dispute the Banking and Currency Department of the Ministry of Finance of the FPR of

Yugoslavia will decide whether a given person is to be considered as a foreigner or a domestic person, under the present Law.

Article 8

The term "foreign exchange regulations" refers to the provisions of the present Law, to the provisions of the Rules for the implementation of the present Law, to the orders, instructions and decisions of the Ministry of Finance of the FPR of Yugoslavia, made on the basis of the present Law, to all the regulations relating to the control of imports and exports enacted by the Minister of Foreign Trade of the FPR of Yugoslavia, as well as to the provisions of agreements with foreign countries which are concerned with payments.

[fol. 122] ' Foreign Exchange Organs

Article 9

1. The Minister of Finance of the FPR of Yugoslavia is the highest foreign exchange State organ entrusted with the control of foreign exchange operations. He exercises this control through the Banking and Currency Department of the Ministry of Finance of the FPR of Yugoslavia, the Ministry of Foreign Trade and the National Bank—as foreign exchange organs and through persons possessing special permits—as auxiliary foreign exchange organs.

2. The delimitation of competences between the foreign exchange organs mentioned in paragraph 1 of the present Article in regard to the implementation of foreign exchange control is regulated by the Minister of Finance of the FPR of Yugoslavia by means of rules elaborated on the basis of Article 24 of the present Law, or by special decision.

Article 10

1. Only persons and institutions expressly provided, by the competent foreign exchange organs, either with a general permit or with a permit for a determined business, if such operations are not allowed by the foreign exchange

regulations, may engage under the present Law, in operations subject to foreign exchange control.

2. The Minister of Finance of the FPR of Yugoslavia can entrust the foreign exchange organs with the exclusive competence of dealing with various forms of foreign exchange [fol. 123] change operations.

3. The National Bank of the FPR of Yugoslavia in its capacity of foreign exchange organ may issue permits to individuals, institutions and auxiliary foreign exchange organs, both for engaging in certain foreign exchange operations and for exercising a certain foreign exchange control.

Article 11

The National Bank of the FPR of Yugoslavia may, when authorized by the Minister of Finance of the FPR of Yugoslavia, request, at any time, the owners in the country to offer for purchase any quantities of foreign exchange, currency, foreign securities and precious metals, fixing at the same time the conditions of purchase.

Article 12

When making decisions the competent foreign exchange organs are bound to take care both of a given branch of the economy as a whole, and of all the persons, institutions and enterprises participating in the given branch of economy. They are also bound to take into account the interests and economic possibilities of the people's republics.

Article 13

The foreign exchange organs and auxiliary organs are not responsible for any damage incurred by the parties as a result of the taking of decisions under the foreign exchange regulations.

[fol. 124]

Article 14

The foreign exchange organs and auxiliary organs are authorized, after having received the approval of the Min-

ister of Finance of the FPR of Yugoslavia, to charge the parties for the expenses incurred in connection with the implementation of controls under the present Law, in the form of compensations for expenditure, taxes and commissions.

Penalties

Article 15-23
(omitted)

Final provisions

Article 24

The Minister of Finance of the FPR of Yugoslavia is authorized to issue regulations, instructions, orders, and decisions for the purpose of implementing the present Law.

Article 25

The present Law will come into force on the eighth day after its publication in the "Official Gazette of the Federal People's Republic of Yugoslavia"

[fol. 125]

IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF MULTNOMAH

No. 71 287

In the Matter of the Estate of

JOE STOICH, Deceased.

ORDER DENYING PETITION FOR ESCHEAT AND DETERMINING DISTRIBUTION

This matter having come on regularly to be heard upon the Petition of the State of Oregon for Finding and Order of Escheat and upon Answer of Heirs to Petition of the State of Oregon for Finding and Order of Escheat on file

herein, the Honorable James W. Crawford, Circuit Judge, presiding, this case, the estates of Muharem Zekich, deceased, No. 71 702, and Marion Berosh, deceased, No. 71 316 of this Court, having been consolidated for hearing by stipulation of the parties because of the similarity of facts and the identity of the issues to be decided, the State of Oregon appearing by the Attorney General of Oregon by Catherine Zorn, Assistant Attorney General, the claimant heirs hereinafter named appearing through Branko Karadzole, Consul General of Yugoslavia at San Francisco, California, by Sinisa Kosutic, Consul of Yugoslavia, and Sava Temer, Consul of Yugoslavia, and by Peter A. Schwabe, their attorney, the Court having heard, received and considered the evidence submitted and having heard the arguments of counsel and the Court finding:

1. That the next of kin and heirs at law of the said Joe Stoich, deceased, hereinafter named were all at the time of his death in Portland, Oregon, on December 6, 1953, residents and nationals of the Federal People's Republic of Yugoslavia.

2. That as of the date and time of death of Joe Stoich, deceased, on December 6, 1953, there existed and now exist in Yugoslavia reciprocal rights upon the part of citizens of the United States to take real and personal property and the proceeds thereof by will or intestacy on the same terms and conditions as inhabitants and citizens of the country of Yugoslavia; that there then existed and now exist the rights of citizens of the United States to receive payment to them within the United States or its territories of moneys originating from the estates of persons dying within the country of Yugoslavia; and further that in the country of Yugoslavia, heirs, distributees, devisees or legatees may receive the benefit, use or control of money or [fol. 126] property from the estates of persons dying within the State of Oregon without confiscation, in whole or in part, by the government of said country of Yugoslavia; that therefore the requirements of Section 111:070 ORS have been fully met and the relatives, heirs and distributees above named are entitled to take and to receive distribution

of their inheritances from the estate of Joe Stoich, deceased.

3. That the next of kin and heirs at law of the said Joe Stoich, deceased, and the shares in which they are entitled to inherit and receive distribution of the clear proceeds of his estate are as follows:

Andja Kolovrat	sister	1/5
Drago Stojic	nephew	1/15
Dragica Sunjic	niece	1/15
Neda Turk	niece	1/15

(The children and all of the issue of a predeceased brother Mijo Stojic).

Josip Buljan	nephew	1/5
(Only son and issue of a predeceased sister Joka Buljan, nee Stojic).		

Jure Zivanovic	nephew	1/5
(Only son and issue of a predeceased sister Mitija Zivanovic, nee Stojic).		

Mara Tolie	niece	1/10
Milan Stojic	nephew	1/10

(The children and all of the issue of a predeceased brother Ivan Stojic).

residing at Prolozac, District of Imotski;
Republic of Croatia, Yugoslavia.

Now Therefore, It Is Hereby Ordered, Adjudged and Decreed:

1. That the Petition of the State of Oregon for Finding and Order of Escheat filed herein by the State of Oregon, acting by and through the State Land Board, be and the same is hereby denied and dismissed.

2. That the next of kin and heirs at law of the said Joe Stoich are the sister, nieces and nephews hereinabove named, and that they are entitled to distribution of the clear distributable proceeds of this estate in the portions and fractions hereinabove set forth.

3. That upon the completion of the administration of this estate and the final settlement thereof distribution be

[fol. 127] made to and among the said next of kin and heirs at law of Joe Stoich, deceased, as hereinabove set forth.

Dated at Portland, Oregon, this 26th day of April, 1957.

James W. Crawford, Circuit Judge.

Approved as to form: Catherine Zorn, Assistant Attorney General of Oregon.

This day continued in Probate Court Journal number Seven hundred and Eighty Nine. (789)

[fol. 128]

IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF MULTNOMAH

No. 71 702

In the Matter of the Estate of

MUHAREM ZEKICH, Deceased.

ORDER DENYING PETITION FOR ESCHEAT AND
DETERMINING DISTRIBUTION

This matter having come on regularly to be heard upon the Petition of the State of Oregon for Finding and Order of Escheat and upon Answer of Heirs to Petition of the State of Oregon for Finding and Order of Escheat on file herein, the Honorable James W. Crawford, Circuit Judge, presiding, this case, the estates of Joe Stoich, deceased, No. 71 287 and Marion Berosh, deceased, No. 71 316 of this Court, having been consolidated for hearing by stipulation of the parties because of the similarity of facts and identity of the issues to be decided, the State of Oregon appearing by the Attorney General of Oregon by Catherine Zorn, Assistant Attorney General, the claimant heirs herein after named appearing through Branko Karadzole, Consul General of Yugoslavia at San Francisco, California, by Sinisa Kosutic, Consul of Yugoslavia, and Sava Temer,

Consul of Yugoslavia, and by Peter A. Schwabe, their attorney, the Court having heard, received and considered the evidence submitted and having heard the arguments of counsel and the Court finding:

1. That the next of kin and heirs at law of the said Muharem Zekich, deceased, hereinafter named were all at the time of his death in Portland, Oregon, on December 17, 1953, residents and nationals of the Federal People's Republic of Yugoslavia.

2. That as of the date and time of death of said Muharem Zekich, deceased, on December 17, 1953, there existed and now exist in Yugoslavia reciprocal rights upon the part of citizens of the United States to take real and personal property and the proceeds thereof by will or intestacy on the same terms and conditions as inhabitants and citizens of the country of Yugoslavia; that there then existed and now exist the rights of citizens of the United States to receive payment to them within the United States or its territories of moneys originating from the estates of persons dying within the country of Yugoslavia; and further that in the country of Yugoslavia, heirs, distributees, devisees or legatees may receive the benefit, use or control [fol. 129] of money or property from the estates of persons dying within the State of Oregon without confiscation, in whole or in part, by the government of said country of Yugoslavia; that therefore the requirements of Section 111.070 ORS have been fully met and the relatives, heirs and distributees above named are entitled to take and to receive distribution of their inheritances from the estate of Muharem Zekich, deceased.

3. That the next of kin and heirs at law of the said Muharem Zekich, deceased, and the shares in which they are entitled to inherit and receive distribution of the clear proceeds of his estate are as follows:

Lutvo Zekic	brother	1/7
Ibro Zekic	brother	1/7
Habiba Turkovic	sister	1/7
Dzedja Popovac	sister	1/7

Sefko Muradbasic	nephew	1/14
Dika Muradbasic	niece	1/14

(Children and all the issue of Djuka Muradbasic, a predeceased sister)

Murta Brkie	niece	1/7
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(Child and all the issue of Nadjla Mehmedbasic, a predeceased sister)

Milka Zekic	niece	1/21
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Jasmina Zekic	niece	1/21
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Rajka Zekic	niece	1/21
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(Children and all the issue of Safet Zekic, a predeceased brother)

residing at Stolac, Republic of Bosnia and Herzegovina, Yugoslavia

Now Therefore, It Is Hereby Ordered, Adjudged and Decreed:

1. That the Petition of the State of Oregon for Finding and Order of Escheat filed herein by the State of Oregon, acting by and through the State Land Board, be and the same is hereby denied and dismissed.

2. That the next of kin and heirs at law of the said Muharem Zekich are the brothers, sisters, nieces and nephews hereinabove named, and that they are entitled to distribution of the clear distributable proceeds of this estate in the portions and fractions hereinabove set forth.

3. That upon the completion of the administration of this [fol. 130] estate and the final settlement thereof distribution be made to and among the said next of kin and heirs at law of Muharem Zekich, deceased, as hereinabove set forth.

Dated at Portland, Oregon, this 26 day of April, 1957.

James W. Crawford, Circuit Judge.

Approved as to form: Catherine Zorn, Assistant Attorney General of Oregon.

[fol. 131]

IN THE SUPREME COURT OF THE STATE OF OREGON

Department 2

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 In the Matter of the Estate of
 JOE STOICH, Deceased.

STATE LAND BOARD, Appellant,

v.

KOLOVRAT et al., Respondents.

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 In the Matter of the Estate of
 MUHAREM ZEKICH, Deceased.

STATE LAND BOARD, Appellant,

v.

ZEKIC et al., Respondents.

Appeals from Circuit Court, Multnomah County.

James W. Crawford, Judge.

Argued and submitted December 16, 1959.

Catherine Zorn, Assistant Attorney General, Salem, argued the cause for appellant. With her on the briefs was Robert V. Thornton, Attorney General, Salem.

Peter A. Schwabe, Portland, argued the cause and filed a brief for respondents.

Before McAllister, Chief Justice, and Lusk, Warner and Sloan, Justices.

Reversed.

OPINION—January 13, 1960

WARNER, J.

We are presented with an appeal from decrees in the estates of Joe Stoich and Muharem Zekich, arising from

proceedings for escheat in each estate instituted by the [fol. 132] State Land Board, hereinafter referred to as the State:

Stoich died intestate in Multnomah county on December 6, 1953, leaving as his only heirs a sister, four nephews, and three nieces, all residents of Yugoslavia.

Zekich likewise died intestate in the same county on December 17, 1953, leaving as his only heirs two sisters, two brothers, two nephews, and three nieces, who are also residents of Yugoslavia.

All the heirs of each decedent are made parties defendant and appear therein by their attorneys in fact.

Because of the similarity of basic facts and questions of law common to both proceedings, the two matters were consolidated in the probate court for the purpose of trial and later consolidated in this court for the purpose of argument.

The position of the State is: that each decedent died without heirs or next of kin entitled to receive any part of his or her relative's estate. It premises its case upon ORS 111.070 (Oregon Laws 1951, ch. 519, § 1).

From orders denying the State's petitions for escheat and determining the right of the several defendants as alien heirs to take their respective distributive shares in the estates to which they lay claim, the State appeals.

This is the first appeal to reach this court from orders made pursuant to ORS 111.070, *supra*. Heretofore, all of the appeals in like matters had their origin in the earlier [fol. 133] counterpart to the present statute, namely, § 61-107, OCLA (Oregon Laws 1937, ch 399, § 1).¹

ORS 111.070, the controlling statute, provides:

"(1) The right of an alien not residing within the United States or its territories to take either real or personal property or the proceeds thereof in this state by succession or testamentary disposition, upon the same terms and conditions as inhabitants and citizens of the United States, is dependent in each case:

¹ The provisions of § 61-107, OCLA, in their entirety will be found in *State Land Board v. Rogers*, — Or —, 347 P2d 57, decided December 2, 1959.

"(a) Upon the existence of a reciprocal right upon the part of citizens of the United States to take real and personal property and the proceeds thereof upon the same terms and conditions as inhabitants and citizens of the country of which such alien is an inhabitant or citizen;

"(b) Upon the rights of citizens of the United States to receive by payment to them within the United States or its territories money originating from the estates of persons dying within such foreign country; and

"(c) Upon proof that such foreign heirs, distributees, devisees or legatees may receive the benefit, use or control of money or property from estates of persons dying in this state without confiscation, in whole or in part, by the governments of such foreign countries.

"(2) The burden is upon such nonresident alien to establish the fact of existence of the reciprocal rights set forth in subsection (1) of this section.

"(3) If such reciprocal rights are not found to exist and if no heir, devisee or legatee other than such alien is found eligible to take such property, the property shall be disposed of as escheated property."

Speaking generally, the principal differences between the present statute and the former one dealing with the [fol. 134] rights of aliens to take inheritances in Oregon estates are: (1) the significant words "in like manner"² do not appear in ORS 111.070, supra, thereby making the reciprocal requirements of the statute read as does its California counterpart on that subject (West, Annotated California Probate Code, 528 § 259); (2) the present act embraces inheritances in real, as well as personal, property; and (3) adds, as an additional condition to the taking, subsection (c) of Section 1, requiring proof that foreign heirs

² See *In re Estate of Krachler*, 199 Or 448, 263 P2d 769, what is there said at pp 458 et seq. concerning the important significance of the words "in like manner," now deleted.

will receive their legacies without diminution by the government of the country where they claim citizenship.

The present act, as before, imposes on the alien non-resident heir the burden of proving the existence of the conditions precedent to qualifying one to take an inheritance in this state. These concurring conditions are: (1) that a reciprocal right existed as of the date of the decedent's death on the part of American citizens to take property from estates in the foreign country in which the alien resides, upon the same terms and conditions as the inhabitants and citizens of that foreign country; (2) that American citizens have the right to receive by payment to them within the United States moneys originating from estates in the foreign country; and (3) that the heirs and legatees in the foreign country will have the use, benefit and control of money or property originating from Oregon estates without confiscation by the foreign government.³ Failure [fol. 135] to sustain the burden imposed upon alien heirs by the preponderance of evidence as to any one of these three items of proof of right results in defeating the claim of the alien to take under the statute. *In re Estate of Krachler*, 199 Or 448, 263 P2d 769; *State Land Board v. Rogers*, — Or —, 347 P2d 57, 59, decided December 2, 1959.

The defendant heirs claims to have met the burden in every particular.

ORS 111.070 is, as was its predecessor, § 61-107, OCLA, a law of succession, which governs the rights of nonresident aliens to take and receive property in the estate of an Oregon decedent. *In re Estate of Krachler*, supra (199 Or at 454); *In re Knutzen's Estate*, 41 Cal2d 573, 191 P2d 747, 751. The date of death controls the succession to the property and the three required rights under ORS 111.070,

³ Because of the frequency of reference to the California statute, supra, the decisions made in the instant appeal and our earlier decisions, we note that the California statute is unlike the current Oregon act in two noteworthy particulars: (1) it does not require evidence of the right of an American citizen to receive payment from a foreign estate in this country; or (2) proof that an alien heir to an estate in the United States will receive money from an estate here without diminution by acts of the government of the alien heir. See § 259 of California Probate code, supra.

supra, must be shown to have so existed under the law of the country of the alien claimant as of that date. *In re Estate of Krachler*, supra, (199 Or at 453); *State Land Board v. Rogers*, supra (347 P2d at 61).

The "rights" of which we speak, as employed in the current statute, have been defined to mean an unqualified right, enforceable at law. *In re Estate of Krachler*, supra (199 Or at 455, 457 and 502), and "definitely ascertainable." *In re Arbulich's Estate*, 41 Cal2d 86, 257 P2d 433, 439. These definitions exclude the concept of a right which may in any sense be limited or dependent upon an act of discretion or grace upon the part of any governmental authority or agency.

We have also held that the second right, i.e., the right to receive, means delivery of the proceeds of an inheritance [fol. 136] from a foreign estate, not in the country where the foreign decedent left property, but a delivery to an Oregon heir in the United States or its territories, originated and implemented by some one authorized to make distribution and delivery of inheritances to the decedent's Oregon heir. *State Land Board v. Rogers*, supra. Moreover, the second right is not reciprocal in character; that is to say, it is not dependent upon the existence of a law of the foreign country that the alien heirs and nationals of that foreign country who take from an Oregon estate must receive delivery of their Oregon legacy within the territory of that country. It is only the "right to take" which must be reciprocal in character. *State Land Board v. Rogers*, supra (347 P2d at 60).

In determining this appeal, we find it only necessary to address ourselves to the question of the existence or non-existence of the second right under the Yugoslavian law; that is, whether there is a certain and enforceable right vested in American citizens to receive the proceeds of a Yugoslavian inheritance in this country.

At the outset, we note that the defendants have placed much in the record concerning laws, regulations and customs prevailing in Yugoslavia at the time of the trial (April, 1957) which may have come into existence subsequent to December, 1953 (the crucial date for the determination of the rights of the Yugoslavian heirs to take the estates involved in this proceeding). It is, therefore, not

always clear to us whether all of the given matter reflected by approximately 85 documents apply to things existing in December, 1953, or to matters arising thereafter. This is well exemplified with reference to the current Article 8 of the Yugoslavian Foreign Exchange Law upon which the [fol. 137] defendants rest no small part of their argument, and to which we will later make fuller reference.

The exchange laws and regulations of a given country have been recognized or treated as conclusively determinative of an Oregon citizen's right to receive his inheritance "within the United States or its territories." *In re Estate of Krachler*, supra (199 Or at 478); *State Land Board v. Rogers*, supra (347 P2d at 61).

The Yugoslavian Law Regulating Foreign Payments (Foreign Exchange Law), hereinafter referred to as the Law, as it was in 1947, and being the Law of Foreign Exchange as adopted in 1945, is set out in substantial entirety in *In re Arbulich's Estate*, supra (257 P2d at 438-439).^{*}

^{*}The pertinent articles of the Foreign Exchange Law, as disclosed in *In Re Arbulich's Estate*, supra (257 P2d at 438-439) read:

"Article 1

"All financial transactions with foreign countries, as well as all transactions within the country in relation to foreign countries that may affect the development of the credit balance of our country and the international value of our domestic currency (foreign exchange transactions) are subject to the control of the Federal Minister of Finance (foreign exchange control).

"Article 2

"Primarily the following transactions are subject to control:

"(a) All transactions within the country and with foreign countries: in foreign exchange, claims and debts in foreign currency and other values in foreign currency;

"(b) All transactions with foreign countries: in domestic currency, credits and debts in domestic currency and other values in domestic currency;

"(c) All transactions with foreigners within the country, causing changes in property relations between our country and foreign countries; and • • •

"Article 3

"The term *transaction* from Articles 1 and 2 as used in this law means the transfer of values and metals and payments, it also means the establishment, cancellation and change of obligations

[fol. 138] Since 1945 it is evident from the following recital in the certificate accompanying Exhibit 30 that the Law was amended in 1946, 1951 and 1954. This certificate reads:

"In the Federal People's Republic of Yugoslavia are in force:

"I

"The Law regulating foreign payments (Foreign [fol. 139] Exchange Law) published in the 'Official Gazette of the FPR of Yugoslavia No. 86 of October 23, 1946,' corrected and changed on the 8th October 1951 ('Official Gazette of the FPR of Yugoslavia' No. 46/1951) and on the 26th January 1954 ('Official Gazette of the FPR of Yugoslavia' No. 5/1954) which reads as follows: * * *"

"Notwithstanding this element of uncertainty as to what precisely was the Foreign Exchange Law in December, 1953, in contrast to what it was in 1947, we find upon

and actual rights to values and metals, as well as changes of holders of rights and obligations.

"Article 4

"Permission must be had for transactions described in Articles 1 and 2 of this Law according to foreign exchange regulations.

"Article 5

"It is forbidden to conclude business in the country the amount of which in domestic currency is tied to gold or some foreign currency. * * *

"Article 6

"(1) The Federal Minister of Finance as the supreme foreign exchange authority, exercises his control over foreign exchange through: [various agencies] * * *

"(2) The Federal Minister of Finance regulates the limits of jurisdiction as between the foreign exchange authorities in regard to the exercising of foreign exchange control, be it by Regulations from Article 25 of this Law, or by separate decisions.

"Article 7

"(1) Transactions, subject to foreign exchange control according to this Law, may be conducted only by persons and establishments authorized to do so by the competent foreign exchange au-

examination little change in substance or legal effect wrought by the amendments made since 1947. Because of defendants' failure to supply the record with copies of the amendments, showing when made or other evidence of like character, we feel justified in assuming that the 1945 Exchange Law remained in effect during December, 1953. *Rusk v. Montgomery*, 80 Or 93, 101, 156 P 435; *Weygandt v. Bartle*, 88 Or 310, 317, 171 P 587; 31 CJS 744, Evidence § 124(4). See, also, *State ex rel. Grismer v. Merger Mines Corp.*, 3 Wash2d 417, 101 P2d 308, 310, where the rule is

authorities, unless the conduct of such business is permitted by the foreign exchange rules themselves.

"Article 8

"The National Bank, whenever authorized by the Federal Minister of Finance, may at any time request the holders in the country to offer for sale to the National Bank all their foreign exchange (regardless whether it be in the shape of claims in foreign currency, checks, drafts, etc.), foreign currency, foreign values and precious metals. If the National Bank decides to buy, it shall fix the terms. . . .

Article 12

"(1) The term 'devisa' as used in the foreign exchange regulations means a claim abroad on whatever basis, in whatever currency, regardless of the manner of disposal . . .

"Article 13

"(1) The term *foreigners* as used in this Law means all persons and corporations with permanent residence or seat abroad, regardless of citizenship of persons and ownership of enterprises.

"(2) The term *domestic persons* means all persons and corporations with permanent residence or seat within the country, regardless of citizenship of persons and ownership of enterprises. . . .

"Article 16

"(1) The penalties for foreign exchange infractions are: . . .

"2. Confiscation of objects or values constituting the foreign exchange infraction, in full or in part. . . .

"(2) The Federal Minister of Finance shall pronounce penalties.

"Article 25

"The Federal Minister of Finance shall issue more detailed rules, regulations and decisions for the execution of this Law, upon consulting the National Bank. . . ."

applied to the law of a foreign jurisdiction; *Martinez v. Gutierrez* (Tex), 66 SW2d 678; 31 CJS, supra, at 769.

Subsections (a), (b) and (c) of Article 2 of the Law of 1945, and as it was in 1946, single out the following transactions as the primary subjects of control:

"Primarily the following transactions are subject to control:

"(a) All transactions within the country and with foreign countries; in foreign exchange, claims and debts in foreign currency and other values in foreign currency;

"(b) All transactions with foreign countries: in domestic currency, credits and debts in domestic currency and other values in domestic currency;

[fol. 140] "(c) All transactions with foreigners within the country, causing changes in property relations between our country and foreign countries; and * * *"

The changes between Articles 1 and 2 of the Law of 1945 and as the same numbered articles appear in Exhibit 30 are immaterial.

In re Arbulich, to which we have made several previous references (decided May 26, 1953), is one of especial force and significance here. It was a proceeding to determine heirship in the estate of a California decedent which was claimed by a brother residing in the United States and by another brother who resided in and was a national of Yugoslavia. The decedent and the brother residing in California were former nationals of that country. The Superior Court entered a judgment to the effect that the brother residing in the United States was entitled to distribution of the entire estate. The Yugoslavian brother appealed. The Supreme Court held that evidence was sufficient to support the finding that on March 21, 1947, when decedent died, the rights of inheritance prescribed by § 259 of the California Probate Code did not exist with respect to either real or personal property as between the residents and citizens of the United States and Yugoslavia. Among other documents of importance before the court was the Foreign Exchange Law which we now review.

The court took notice of the amendments made to the 1945 Law in October, 1946, referring particularly to Article 24, as so amended (257 P2d at 439), saying:

"The second decree, effective October 25, 1946, confirms the decree of September 7, 1945, and amends it in various respects which appear to be largely immaterial here. However, Article 24 of the second decree [fol. 141] [i.e., October, 1946], provides that 'The Minister of Finance of FPRY is herewith authorized to issue regulations, instructions, orders and decrees, for the execution of this law,' * * *."

We, therefore, feel warranted in saying that Article 24, as thus referred to in Arbulich, is identical with Article 24 as found in Exhibit 30 of the instant matter and the slight differences appearing may be credited to differences in translation. This justifies our conclusion that Article 24, as above quoted in Arbulich, was an integral and important element of the Law in December, 1953.

The court, continuing, stated:

"Appellant urges that the 'Foreign Exchange Law' has no materiality in relation to the question of reciprocity; that it is merely 'regulatory of foreign exchange and has no reference whatever to rights of inheritance.' But a reading of the entire substance of the documents mentioned makes it apparent that the trial court was justified in reaching the conclusion that under Yugoslav law a citizen of the United States, at the time of decedent's death, had no definitely ascertainable and enforceable right to *receive* Yugoslav property by testament, and that the receipt of any such property would depend in each case upon the largely, if not entirely, uncontrolled discretion of the Minister of Finance. This is far different from a standardized regulation which might merely delay the transmission of gold, money, or other stores of value from one nation to another. * * *" (257 P2d at 439)

We also say, as did the California court, the Law has the effect of "confirming the apparently unlimited power of the

Minister of Finance over foreign exchange transactions" [fol. 14] and the absence of any "definitely ascertainable and enforceable right to receive Yugoslav property by testament, and that the receipt of any such property would depend in each case upon the largely, if not entirely, uncontrolled discretion of the Minister of Finance."

The rules authorized by Article 25 of the Law for the implementation of the regulation of foreign payments (hereinafter referred to as the Rules) are found in Exhibit 31. They capture and intensify the absolute control of foreign exchange which the Law reposes in the Minister of Finance. This is illustrated by pertinent parts included in marginal footnote.⁵

The record is replete with evidence of remittances from estates in Yugoslavia to persons in the United States and [fol. 143] the testimony of Yugoslavian consular representatives and experts called by the defendants concerning the

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"Foreign Exchange Regulations

"Article 1

"Foreign exchange operations can be pursued only in accordance with the foreign exchange regulations, as well as authorization and permits delivered on the basis of the said regulations.

"Article 2

"1. The export of any means of payment and securities both in domestic and foreign currency, in any form (effective currency, foreign exchange, securities, coupons, etc.), both directly or indirectly (through other persons, the postoffice, etc.) *is not allowed without the permission of the competent foreign exchange authorities*, issued in conformity with the foreign exchange regulations. The export is exceptionally allowed in cases which are regulated in general, by the foreign exchange regulations (for instance, in passenger traffic).

"2. From foreign exchange regulations are exempted all exports of values enumerated in the present Article, effected by the Federal Ministry of Finance and the National Bank.

"Article 12

"1. Foreign exchange operations may be pursued exclusively on the basis of permits issued by the competent foreign exchange authorities, if these operations are not allowed by the foreign exchange regulations themselves.

"3. Likewise, all claims abroad which are not specifically mentioned in the foreign exchange regulations can be settled only after

movement of such funds, all offered as proof that American citizens have in the past received their legacies by delivery in the United States. This phase of the case is further amplified by self-serving declarations of the same tenor from Yugoslavian diplomatic representatives to the State Department and documents emanating from officials in that country. Much of this is immaterial, having dates subsequent to December, 1953, or lacking of any identifying dates; some are deficient in other respects which are unnecessary to note because we are compelled to reject all evidence of this character as legally inconclusive of the problem we now have under consideration. Moreover, the testimony of the Yugoslavian officials, including the diplomatic correspondence referred to, serves at most to create a conflict in the evidence as to the ultimate fact of whether or not there exists *as a matter of law an unqualified and enforceable right to receive* as defined by ORS 111.070, supra. Nor is this answered by evidence that some American citizens have enjoyed the "right to receive" the proceeds of their respective inheritances in whole or in part. The real test is whether *all* American citizens under the law of Yugoslavia can demand and enforce that right under the law in contradistinction to a dependency upon the good will or gracious indulgence of some official of that country.

Even if it can be said these items of evidence do reveal a flow of exchange from Yugoslavia to American heirs as of December, 1953, they, at the most, only attest the indulgence of the Yugoslavian authorities as to the American heirs as of that time. Certainly, as discretionary acts, per-[fol. 144] missible under the Law, they do not evidence the presence of an unqualified and enforceable right to receive by delivery of funds in the United States to citizens thereof

the permission of the Banking and Currency Department of the Federal Ministry of Finance has been obtained.

"Article 13

• • • • •
 "3. Foreign exchange operations depending on the authorization of foreign exchange authorities can be pursued exclusively by the persons to whom these permits have been issued on the basis of original permits." (Emphasis ours.)

under the foreign exchange laws and regulations of that country in 1953. The fact that some American citizens were so favored does not preclude wonderment as to how many may have been denied "the right to receive" or, indeed, whether those who did receive moneys by exchange, received all or only a part thereof. This line of evidence has many of the characteristics noted by Mr. Justice Brand in the *Krachler* case, *supra* (199 Or at 499-502). What was done yesterday "as a matter of course" in the exercise of powers of discretion may not be the rule or custom of tomorrow. *State Land Board v. Rogers*, *supra* (247 P2d at 63).

Unless the area of alien succession over which the state of Oregon seeks to control through ORS 111.070, *supra*, has been preempted by some treaty agreement subsisting between Yugoslavia and the United States as of December, 1953, we are of the opinion that both the Yugoslavian Foreign Exchange Laws and Regulations extant as of that date operate as a denial of the claims of the defendants.

We are mindful that rights of succession to property under local law may be affected by an overriding federal policy when a treaty makes different or conflicting arrangements. In such event, the state policy must give way. *Clark v. Allen*, 331 US 503, 517, 91 L ed 1633, 1645, 67 S Ct. 1431.

By way of circumventing the adverse effect of the Yugoslavian Law and Regulations, the defendants place great reliance upon their interpretation of Article II of the Convention for Facilitating and Developing Commercial [fol. 145] Relations (sometimes called the Convention of Commerce and Navigation and by us hereinafter called the Treaty of 1881) as concluded on October 2/14, 1881, between the United States of America and Serbia (now a constituent part of Yugoslavia) (22 Stat 963, Treaty series 319). It is before us at Exhibit 9.

⁶ Its present and continuing effectiveness is attested by The Settlement of Pecuniary Claims Against Yugoslavia Agreement between the United States of America and that country of July 19, 1948 (Exhibit 7 herein), as is confirmed by Article 5, reading:

"The Government of Yugoslavia agrees to accord to nationals of the United States lawfully continuing to hold, or hereafter acquir-

Article II of the Treaty of 1881 reads:

"In all that concerns the right of acquiring, possessing or disposing of every kind of property, real or personal, citizens of the United States in Serbia and Serbian subjects in the United States, shall enjoy the rights which the respective laws grant or shall grant in each of these states to the subjects of the most favored nation.

"Within these limits, and under the same conditions as the subjects of the most favored nation, they shall be at liberty to acquire and dispose of such property, whether by purchase, sale, donation, exchange, marriage contract, testament, inheritance, or in any other manner whatever, without being subject to any taxes, imposts or charges whatever, other or higher than those which are or shall be levied on natives or on the subjects of the most favored state.

"They shall likewise be at liberty to export freely the proceeds of the sale of their property, and their goods in general, without being subjected to pay any other or higher duties than those payable under similar circumstances by natives or by the subjects of the most favored state."

[fol. 146] Proceeding on the theory that Article II of the Treaty of 1881 embraces the "right to receive," as well as the "right to take," the respondents rely on Article 8 of the Law, *supra*, offered by them as Exhibit 28 as an exception to the operation of the Foreign Exchange Law in so far as the "provisions of agreements with foreign countries are concerned with payment." The provisions of Article 8 of the current Law as reflected by that exhibit read:

ing assets in Yugoslavia, the rights and privileges of using and administering such assets and the income therefrom within the framework of the controls and regulations of the Government of Yugoslavia, on conditions not less favorable than the rights and privileges accorded to nationals of Yugoslavia, or of any other country, in accordance with the Convention of Commerce and Navigation between the United States of America and the Prince of Serbia, signed at Belgrade, October 2-14, 1881."

"The term 'foreign exchange regulations' refers to the provisions of the present Law, to the provisions of the Rules for the implementation of the present Law, to the orders, instructions and decisions of the Ministry of Finance of the FPR of Yugoslavia, made on the basis of the present Law, to all the regulations relating to the control of imports and exports enacted by the Minister of Foreign Trade of the FPR of Yugoslavia, as well as to the provisions of agreements with foreign countries which are concerned with payments."

As we have previously observed, at pages 438 and 439 of *In re Arbulich's Estate*, supra, there is spread with great detail the Yugoslavian Foreign Exchange Law as it was at that time. Comparing Article 8 of the Law as it was then with the current Article 8 of the same Law indicates some amendments since 1947. But when? Was Article 8, as above quoted, in effect in December, 1953, or was it so enacted subsequent to that time? Although pressed by counsel for the state, the defendants' witness Temer, the Consul General of the Yugoslavian Consulate at San Francisco, was unable to say whether the current Article 8 of the Law was effective in December, 1953.

Assuming arguendo that the current Article 8 of the Law was prevailing in December, 1953, we find no difficulty in concluding that it gives some recognition to the provisions of Article II of the Treaty of 1881. But it is only to the extent that Article II has any impact upon the "right to receive" as defined by ORS 111.070, supra, would the later Article 8 become a matter of interest. We think, notwithstanding what may be the date of its enactment, that it has no bearing on our present problem.

Clark v. Allen, supra, decided June 9, 1947, becomes a holding of prime interest in this matter in that it was precipitated by a proceeding initiated under § 259, California Probate Code as it was in 1942. It will be remembered that section bears upon the rights of aliens not residing in the United States to take real or personal property in the state of California. And for the further reason that it

⁷ Sections 259 and 259.2 of the California Code, supra, are identical with ORS 111.070 (1) (a) and (b) and subsection (3).

construes a treaty provision similar to Article II of the Treaty of 1881.

In the Clark case, Alvina Wagner, a resident of California, died in 1942. She left real and personal property situate in that state. By a will, dated December 23, 1941, she bequeathed her entire estate to four relatives who were nationals and residents of Germany. Six heirs at law, who were residents of California, filed a petition for determination of heirship in the probate proceeding, claiming that the German nationals were ineligible as legatees under § 259, *supra*, of the California Probate Code. It appears that at the time of the decision in Clark, there had never been a hearing on that petition. This, for the reason that in 1943 the Alien Property Custodian vested in himself all right, title and interest of the German nationals in Mrs. Wagner's estate. The Property Custodian thereupon in [fol. 148] stituted an action in the U. S. District Court against the executor under the will and the California heirs at law for a determination that the California heirs had no interest in the estate and that he was entitled to the entire net estate upon the conclusion of the administration. The District Court granted judgment for the Custodian on the pleadings (52 F Sup 850). The Circuit Court of Appeals reversed, holding that the District Court was without jurisdiction of the subject matter (147 F2d 136). The case went thence to the Supreme Court on certiorari where it was held that the District Court had jurisdiction of the suit and remanded the cause to the Circuit Court of Appeals (9th CC) for consideration on the merits (326 US 490). The Circuit Court of Appeals thereafter held for the California heirs (156 F2d 653). The case was returned again to the Supreme Court on a petition for a writ of certiorari which was granted on the ground that the issues raised were of national importance.

The defendants concede that the Clark case over the years has, since its pronouncement in 1947, come to be regarded as "the cornerstone of the entire reciprocal inheritance rights structure as it was the first major decision by a court of last resort on the California reciprocity statute."

In *Clark v. Allen*, *supra*, the court was called upon to construe Article IV of the Treaty of Friendship, Commerce

and Consular Rights made with Germany December 8, 1923 (44 Stat 2132). It had different provisions relating to the testamentary disposition of realty and personalty. Article IV of the Treaty, which is the provision of our interest, contained the following provisions as to the disposition of personalty:

"Nationals of either High Contracting Party may [fol. 149] have full power to dispose of their personal property of every kind within the territories of the other, by testament, donation, or otherwise, and their heirs, legatees and donees, of whatsoever nationality, whether resident or non-resident, shall succeed to such personal property, and may take possession thereof, either by themselves or by others acting for them, and retain or dispose of the same at their pleasure subject to the payment of such duties or charges only as the nationals of the High Contracting Party within whose territories such property may be or belong shall be liable to pay in like cases." (Emphasis ours.) (91 L ed at 1644)

We are of the opinion that the following words and phrases found in the German Treaty of 1923: "Nationals of either High Contracting Party, . . . within the territories of the other," are of the same import and meaning as the words and phrases found in Article II of the Treaty of 1881; that is, "citizens of the United States in Serbia and Serbian subjects in the United States," a phrasing which the defendants ascribe to Victorian English.

In the Clark case, it was held that the language of Article IV of the German Treaty applied only to nationals of either of the party nations who were *within* the territory of the other. Mr. Justice Douglas speaking for the court, says at p 1644 L ed:

" . . . In case of personalty, the provision governs the right of 'nationals' of either contracting party to dispose of their property within the territory of the 'other' contracting party; and it is 'such personal property' that the 'heirs, legatees and donees' are entitled to take.

"Petitioner, however, presents a detailed account of the history of the clause which was not before the Court in *Frederickson v. Louisiana*, 23 How (US) 445, 16 L ed 577, *supra*, and which bears out the construction [fol. 150] that it grants the foreign heir the right to succeed to his inheritance or the proceeds thereof. But we do not stop to review that history. For the consistent judicial construction of the language since 1860 has given it a character which the treaty-making agencies have not seen fit to alter. And that construction is entirely consistent with the plain language of the treaty. We therefore do not deem it appropriate to change that construction at this late date, even though as an original matter the other view might have much to commend it.

"We accordingly hold that Article IV of the treaty does not cover personalty located in this country and which an American citizen undertakes to leave to German nationals. * * *"

The Supreme Court of California also had before it the provisions of Article II of the Treaty of 1881 in the *Arbulich* case, *supra*, which were there urged, as here, as applicable and controlling in favor of the appellant brother. Concerning this, Mr. Justice Schauer, who spoke for the court, stated:

"Appellant contends, nevertheless, that the provisions of Article II of a treaty entered into in 1881 between the United States and the Kingdom of Serbia, 22 Stat. 964 (of which the present Republic of Yugoslavia is the successor government) and certified by the Secretary of State of the United States as remaining in full force and effect between this country and Yugoslavia, are applicable and controlling in appellant's favor on the issue of reciprocity. It may be noted that the first paragraph of Article II seemingly treats only of 'citizens of the United States in Serbia [Yugoslavia] and Serbian [Yugoslav] subjects in the United States,' rather than, as is the situation in the present case, of a United States citizen who dies in

the United States and leaves property to a Yugoslav subject who is in *Yugoslavia*, and therefore is not here [fol. 151] applicable. Even if we assume its applicability in that respect, however, the rights granted are only those given by each of the contracting nations 'to the subjects of the most favored nation,' and do not purport to equal the rights given or guaranteed by each of the contracting nations to *its own* citizens. Consequently the treaty provisions do not establish the reciprocal rights required by the Probate Code." (257 P2d at 437)

In that holding, we find the California court, and we think rightly, following the pattern of interpretation accorded the German treaty before the United States Supreme Court six years before in *Clark v. Allen*, supra. We take notice that a writ of certiorari in *Arbulich* was denied by the Supreme Court of the United States (345 US 897, 98 L ed 398, 74 S Ct 219) and later a petition for leave to file a petition for rehearing was also denied (347 US 908, 98 L ed 1066, 74 S Ct 426).

If we correctly appraise the position of defendants, they would, notwithstanding the doctrine of *Clark v. Allen*, supra, have us interpret the words "in Serbia" and "in the United States," as they appear in Article II of the Treaty of 1881, as referring to the place where property rights are granted rather than to the geographical location of the person claiming them. If thus construed the provision would accord to the nationals of either party wherever resident rights similar to those enjoyed by nationals of the most favored nation wherever resident. But this we decline to do, being impressed that the construction given to the German Treaty in the *Clark* case applies with equal force to the Serbian Treaty of 1881, and as also held in *Arbulich's Estate*.

At the time of *In re Arbulich*, as well as in 1953, the [fol. 152] California state code (see § 259 California Probate Code) carried no provision comparable to subsection (3) of § 1 of ORS 111.070, requiring, as does the Oregon statute, the right "to receive by payment to them within the United States or its territories money originating from the estates of persons dying within such foreign country." The

right to receive as discussed by the court in *Arbulich*, was without the mandatory direction of the California act or that it be a receipt by delivery in the United States. In this respect, the Oregon act is much more stringent than the provisions of the California Probate Code or similar codes that have come to our attention. It is a difference which may well account for the ruling of the Los Angeles Superior Court of California in *Miloglav's Estate*, No. 301394, May 5, 1954, and which comes to our notice via defendants' Appendix F.

We are not informed as to the reasons which prompted the reenactment of subsection (b) of § (1) of ORS 111.070 in 1951, and as it was in § 61-107, OCLA, nor the new provision, subsection (c), of the same section of the present act relating to assurances that foreign beneficiaries of an Oregon estate receive the avails of their shares without confiscation by the government of the country in which said beneficiaries resided. But whatever was the legislative purpose, whether to circumvent then known practices of certain governments by way of diminishing or confiscating inheritances received by some of their citizens from Oregon estates or in barring the free movement of foreign inheritances to Oregon beneficiaries, we think it was clearly within the legislative province to prescribe the various conditions found in ORS 111.070. The protective solicitude by our legislature demonstrated by the provisions of ORS [fol. 153] 111.070 in behalf of Oregon citizens is extended to alien heirs residing in foreign countries who inherit in Oregon. In short, the net result when observed, at least on the part of the state of Oregon, brings ORS 111.070 more in harmony with the spirit of the international agreements as contended for by defendants than their interpretation of those treaties demand. In effect, subsections (b) and (c) of § (1) of that statute place local heirs and alien heirs on a parity by insuring to each the full measure of their respective inheritances. We deem both of these conditions a reasonable exercise of legislative power, and in no sense trespassing upon any international treaty or agreement brought to our attention, but to the contrary implementing the spirit, if not the letter, of such accords.

In arriving at our conclusions, we have given attention to the terms of what is commonly known as the Bretton Woods Agreement of 1944, cited by the defendants. Yugoslavia was one of the 44 participating governments at the United Nations Monetary and Financial Conference of that year. Later, it became one of the signatories to the Articles of Agreement formulated as the final act of the conference. The major features of the final document provided for establishment of the International Monetary Fund and of the International Bank for Reconstruction and Development. It is common knowledge that the conference was motivated by the then prevailing international apprehension world economy would suffer seriously as an aftermath of World War II unless some devices to stabilize it were quickly undertaken by the world powers. This thought is clearly affirmed by Article I of that agreement, wherein its controlling purposes and objectives are stated.

The defendants, however, point to its Art XIV, § 4 and [fol. 154] Art XI, § 2, which provide sanctions against any member nation which imposes foreign exchange restrictions contrary to the provisions of the agreement. Although not fully developed by defendants' argument, the inference is that a foreign exchange system of controls and regulations was established thereby which would nullify the restrictive character of the Yugoslav Foreign Exchange Law and implementing Regulations. The contrary is clearly evident from a reading of the entire agreement. It is replete with expressions recognizing the want of economic parity between the signing nations and the relative difficulties of some of the lesser nations in maintaining a sound monetary system, and definitely places them in an exceptional class. We turn for the moment to one of the very articles to which they point. It is significantly captioned "Transitional Period." Section 2 of that article is subcaptioned "Exchange Restrictions." Its provisions are spread in marginal note.*

* "In the post-war transitional period members may, notwithstanding the provisions of any other articles of this Agreement, maintain and adapt to changing circumstances (and, in the case of members whose territories have been occupied by the enemy, introduce where necessary) restrictions on payments and transfers for current international transactions. Members shall, however,

Article VII, 3(b) of the agreement is also to the same tenor in recognizing that some nations will find the need to "impose limitations on the freedom of exchange operations."

The Bretton Woods Agreement gives no support to the thesis of defendants and, to the contrary, is in a large sense [fol. 155] on international recognition that some countries, rightly or wrongly, would impose strictures such as are exemplified by the foreign exchange laws of Yugoslavia and Bulgaria (see *State Land Board v. Rogers*, supra).

By way of weakening or equivocating the applicability of *Clark v. Allen*, supra, we are cited the opinions of the California Attorney General, dated July 15, 1942, listing foreign nations of that time with whom the Attorney General deemed reciprocal inheritance rights existed by reason of treaties. This listing included Yugoslavia. Notwithstanding that such compilation was then made by the now Chief Justice of the United States, its persuasive value as to that nation was nullified 11 years later by *In re Arbulich's Estate* (1953). They also rely upon an opinion of the Oregon Attorney General given in 1938 (19 Op Atty Gen 136) to the same effect. But we are informed by the State's brief in this matter that this opinion has been abandoned by that office since the holding of *Clark v. Allen*, supra, in 1947.

Much of defendants' argument rests upon the mistaken premise that "the right to receive," which is the sole right to which we give attention in this matter, is reciprocal in character. This is contrary to the conclusion of *State Land Board v. Rogers*, supra. It is only "the right to take" that demands reciprocal legislation in a foreign country. This is but another reason why we do not find the provisions of

have continuous regard in their foreign exchange policies to the purposes of the fund; and, as soon as conditions permit, they shall take all possible measures to develop such commercial and financial arrangements with other members as will facilitate international payments and the maintenance of exchange stability. In particular, members shall withdraw restrictions maintained or imposed under his Section as soon as they are satisfied that they will be able, in the absence of such restrictions, to settle their balance of payments in a manner which will not unduly encumber their access to the resources of the Fund." (Emphasis ours.)

ORS 111.070 impinging upon any treaty existing between the United States and Yugoslavia.

During the course of the oral argument, counsel for the defendants laid great stress upon two diplomatic notes exchanged by the State Department and the Embassy of [fol. 156] Yugoslavia. We were there led to believe that their net result was equivalent to a bilateral modification of the Treaty of 1881, giving to it a construction contrary to the doctrines as expressed in *Clark v. Allen*, supra, and *In re Arbulich's Estate*, supra.

This exchange was had in April, 1958, and hence not a part of the record of the trial court when it entered its decree in this matter in April, 1957. The defendants bring these notes to our attention via the filing of a supplemental brief. We pass the question of the propriety of bringing matters of that kind to this court under the circumstances, but observe they do not have the force and effect claimed for them even if they were ever properly made a part of the record. This is made patently manifest by the concluding paragraph of the note from the State Department in response to the query from the Yugoslavian Embassy, where it stated:

"This note, of course, is not to be considered as having the character of an international agreement or as effecting any modification of the treaty [The Treaty of 1881]."

We hold that the provisions of ORS 111.070 relating to the right of American citizens to receive a foreign inheritance by delivery in the United States or its territories, does not do violence to any treaty subsisting between this country and Yugoslavia in December, 1953. We also hold that the Yugoslavian Foreign Exchange Law and Foreign Exchange Regulations enacted pursuant thereto as they were as of that date negative the concept of an unqualified and enforceable right to receive delivery of Yugoslavian inheritance in this country by an American citizen, but to [fol. 157] the contrary make its receipt dependent upon the grace or sufferance of a Yugoslavian authority.

These conclusions make it unnecessary for us to give consideration to the claim of the defendants concerning the

right of American citizens to take or inherit under Yugoslavian law or the sufficiency of the proof relating to the right of Yugoslavian citizens to receive an American inheritance without diminution by the government of that country. The failure to prove the legal existence of any one of the three conditions required by ORS 111.070 defeats the claims of succession to an Oregon inheritance.

The decree is reversed. Each party will pay own costs.

[fol. 158]

IN THE SUPREME COURT OF OREGON

[Title omitted]

ORDER DENYING PETITION FOR REHEARING—March 1, 1960

The Court having duly considered respondents' petition for rehearing, and the Court being fully advised thereon,

It Hereby Is Ordered that such petition be and the same hereby is denied.

[fol. 159].

IN THE SUPREME COURT OF OREGON

Appeal From Multnomah County

In the Matter of the Estate of Joe Stoich, deceased.

STATE OF OREGON, acting by and through the
State Land Board, Appellant,

v.

ANĐJA KOLOVRAT, DRAGO STOJIC, DRAGICA SUNJIC, NEDA TURK, JOSIP BULGAN, JURE ZIVANOVIC, MARA TOLIC and MILAN STOJIC, and also BRANKO KARADZOLE, Consul General of Yugoslavia at San Francisco, California, Respondents.

• DECREE—January 13, 1960

This cause on December 16, 1959, having been duly argued and submitted upon and concerning all questions arising upon the transcript and record and then reserved for

further consideration, and the Court having fully considered all said questions as well as suggestions of counsel in their argument and briefs finds there is error as alleged.

It Therefore Is Considered, Ordered and Decreed that the decree of the court below rendered and entered in this cause be and the same is in all things reversed and set aside.

It Further Is Ordered that each party pay his own costs in this Court.

It Further Is Ordered that this cause be remanded to the court below from which the appeal was taken with directions to take further proceedings in conformity with the opinion of the Court herein and in accordance therewith.

[fol. 160]

IN THE SUPREME COURT OF OREGON
Appeal From Multnomah County

In the Matter of the Estate of Muharem Zekich, deceased.

STATE OF OREGON, acting by and through the
State Land Board, Appellant,

v.

LUTVO ZEKIC, IBRO ZEKIC, HABIBA TURKOVIC, DZEDJA POPOVAC, SEFKO MURADBASIC, DIKA MURADBASIC, MURTA BEKIC, MILKA ZEKIC, JASMINA ZEKIC and RAJKA ZEKIC, and BRANKO KARDOZOLE, Consul General of Yugoslavia at San Francisco, California, Respondents.

DECREE—January 13, 1960

This cause on December 16, 1959, having been duly argued and submitted upon and concerning all questions arising upon the transcript and record and then reserved for further consideration, and the Court having fully considered all said questions as well as suggestions of counsel in their argument and briefs finds there is error as alleged.

It Therefore Is Considered, Ordered and Decreed that the decree of the court below rendered and entered in this cause be and the same is in all things reversed and set aside.

It Further Is Ordered that each party pay his own costs in this Court.

It Further Is Ordered that this cause be remanded to the court below from which the appeal was taken with directions to take further proceedings in conformity with the opinion of the Court herein and in accordance therewith.

[fol. 160a] Clerk's Certificate (omitted in printing).

[fol. 161]

SUPREME COURT OF THE UNITED STATES

[Title omitted]

ORDER ALLOWING CERTIORARI—Filed October 10, 1960

The petition herein for a writ of certiorari to the Supreme Court of the State of Oregon is granted, and the case is transferred to the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

IN THE
Supreme Court of the United States
OCTOBER TERM, 1959

No. ~~92~~ 102

ANDRA KOLJOVAT, DRAGO STOKIC, DRAGICA SUNJIC,
NEDA TURK, JOSIP BULGAN, JURE ZIVANOVIC,
MARA TOLIC and MILAN STOKIC, and also BRANKO
KARADZOLE, Consul General of Yugoslavia at
San Francisco, California, *Petitioners*

v.

STATE OF OREGON, acting by and through the
State Land Board

LUTVO ZEKIC, IBRO ZEKIC, HARIBA TURKOVIC, DZEDJA
POPOVAC, SEFKO MURADBASIC, DIKA MURADBASIC,
MERTA BRKIC, MILKA ZEKIC, JASMINA ZEKIC and
RAJKA ZEKIC, and BRANKO KARADZOLE, Consul
General of Yugoslavia at San Francisco, Cali-
fornia, *Petitioners*

v.

STATE OF OREGON, acting by and through the
State Land Board

**PETITION FOR A WRIT OF CERTIORARI TO THE
SUPREME COURT OF THE STATE OF OREGON**

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IN THE
Supreme Court of the United States

OCTOBER TERM, 1959

No.

ANDJA KOLOVRAT, DRAGO STOJIC, DRAGICA SUNJIC,
NEDA TURK, JOSIP BULGAN, JURE ZIVANOVIC,
MARA TOLIC and MILAN STOJIC, and also BRANKO
KARADZOLE, Consul General of Yugoslavia at
San Francisco, California; *Petitioners*

v.

STATE OF OREGON, acting by and through the
State Land Board

LUTVO ZEKIC, IBRO ZEKIC, HABIBA TURKOVIC, DZEDJA
POPOVAC, SEFKO MURADBASIC, DIKA MURADBASIC,
MURTA BRKIC, MILKA ZEKIC, JASMINA ZEKIC and
RAJKA ZEKIC, and BRANKO KARADZOLE, Consul
General of Yugoslavia at San Francisco, Cali-
fornia, *Petitioners*

v.

STATE OF OREGON, acting by and through the
State Land Board

**PETITION FOR A WRIT OF CERTIORARI TO THE
SUPREME COURT OF THE STATE OF OREGON**

The petitioners Andja Kolovrat, Drago Stojic,
Dragica Sunjic, Neda Turk, Josip Bulgan, Jure
Zivanovic, Mara Tolic, Milan Stojic and Lutvo Zekic,
Ibro Zekic, Habiba Turkovic, Dzedja Popovac, Sefko

Muradbasic, Dika Muradbasic, Murta Brkic, Milka Zekic, Jasmina Zekic, Rajka Zekic and Branko Karadzole, Consul General of Yugoslavia at San Francisco, California, respondents in consolidated proceedings below, pray that a writ of certiorari issue to review the decrees of the Supreme Court of the State of Oregon therein.

OPINIONS BELOW

The opinion of the Supreme Court of the State of Oregon is reported at 70 A. S. (Ore.) 55 and 349 P.2d 255, and is set out in App. A, pp. 1a-26a, *infra*. The Circuit Court of the State of Oregon for the County of Multnomah rendered no opinion.

JURISDICTION

The decrees of the Supreme Court of the State of Oregon, reversing orders of the Circuit Court of the State of Oregon for the County of Multnomah, are dated and were entered January 13, 1960. The petitioners' timely petition for rehearing, filed February 26, 1960, was denied by order dated and entered March 1, 1960. The order and decrees of the Supreme Court of Oregon are set out in App. B, pp. 27a-32a, *infra*. The orders of the Circuit Court of Oregon are set out in App. C, pp. 33a-38a, *infra*. The jurisdiction of this Court is invoked under Tit. 28 U.S.C. Sec. 1257(3).

QUESTIONS PRESENTED

1. Whether under Article II of the Convention for Facilitating and Developing Commercial Relations of 1881, in force and effect between the United States and Yugoslavia, 22 Stat. 963, the citizens of both countries to whom there is thereby granted the right, among others enjoyed by citizens of the most favored

nation, to acquire by inheritance, or otherwise, property located within the territory of the other include citizens of one country who are not within the territory of the other.

2. Whether notwithstanding the adherence of both the United States and Yugoslavia to the Articles of Agreement of the International Monetary Fund, 60 Stat. 1401, a State of the United States may deprive citizens and residents of Yugoslavia of the capacity to inherit property in such State solely by reason of the existence in Yugoslavia of foreign exchange controls, imposed or maintained consistently with such Agreement, pursuant to a State law making the right of an alien residing in a foreign country to take by will or by intestacy dependent upon "the rights of citizens of the United States * * * money originating from estates of persons dying within such foreign country * * *".

TREATIES AND STATUTES INVOLVED

The treaty provisions involved are those of Article II of the Convention for Facilitating and Developing Commercial Relations (sometimes called the Convention of Commerce and Navigation) concluded between the United States and Serbia on October 2/14, 1881, 22 Stat. 963; Tr. Ser. 319, App. D, pp. 39a-42a, *infra*.¹

¹ Hereinafter sometimes called "the Convention". That treaties concluded between the United States and Serbia continued in force and effect between the United States and Yugoslavia upon the latter's emergence from the union with Serbia of Montenegro and territories of the former Austro-Hungarian Monarchy, was the conclusion reached in *Ivancevic v. Artukovic*, 211 F. 2d 565 (9th Cir. 1954), cert. denied 348 U.S. 818, in which the United States participated as *amicus* in support of that view. That the Convention was in force and effect between the United States and Yugoslavia was not questioned below. R 633, 634.

Also involved are the provisions of Article VI, Section 3, Article VIII, Section 2, Article XIV, Sections 2 and 4, and Article XV, Section 2 of the Articles of Agreement of the International Monetary Fund, concluded on December 27, 1945, 60 Stat. 1401, T.I.A.S. 1501, to which the United States and Yugoslavia are signatories.² These provisions are set out in App. E, pp. 43a-47a, *infra*. The statutory provisions involved are those of Section 111.070, Oregon Revised Statutes, which is set out in App. F, p. 48a, *infra*.

STATEMENT

Joe Stoich and Muharem Zekich died intestate in Oregon in December 1953. The petitioners, citizens and residents of Yugoslavia, are, except the Consul General of Yugoslavia, their respective brothers, sisters, nephews and nieces and their only heirs and next-of-kin. The State of Oregon filed petitions in the Circuit Court of Oregon for the escheat of the estates of both decedents upon the ground that as citizens and residents of Yugoslavia, the petitioners were without capacity to inherit property in Oregon by virtue of Section 111.070 of the Oregon Revised Statutes, App. F, p. 48a, *infra*, for the reason that the requirements thereof were not met by Yugoslavia. The petitions were opposed, and the proceedings were consolidated for trial.³ R 6, 17, 623. The Circuit Court found against the State, dismissed its petitions for escheat, and ordered that distribution of both

² Hereinafter sometimes called "the International Monetary Fund Agreement", or "the Agreement".

³ Originally, the estate of one Berosh was also involved. However, the petition for the escheat of his estate was dismissed early in the proceedings when it appeared that his survivors included a brother who was a citizen and resident of Australia. R 622, 623.

estates be made to the decedents' heirs and next-of-kin, the petitioners here. App. C, pp. 33a-38a, *infra*. Upon the State's consolidated appeals, the Supreme Court of Oregon reversed, and ordered both estates escheated. App. A, pp. 1a-26a, *infra*; App. B, pp. 27a-32a, *infra*.

The petitioners opposed the escheat of the estates on three grounds: *First*, that the petitioners were not barred from inheriting under the Oregon statute, App. F, p. 48a, *infra*, because all the requirements of the statute were in fact met by Yugoslavia, and in support of this contention, both oral and documentary evidence was introduced at the trial (R 43-185); *Second*, that the Oregon statute was inapplicable to citizens of Yugoslavia, because citizens of that country are entitled to the same rights of inheritance in the United States as American citizens by virtue of Article II of the Convention, App. D, pp. 39a-40a, *infra*, which grants to Yugoslav citizens the same rights to acquire property in the United States, by inheritance or otherwise, as are enjoyed by citizens of the most favored nation, and the United States has by treaty granted to citizens of other nations the right to inherit property in the United States under the same terms and conditions as citizens of the United States;⁴

⁴ See, e.g., Article IX of the Treaty of Friendship, Commerce and Navigation concluded between the United States and Argentina, July 27, 1853, 10 Stat. 1005, Tr. Ser. 4, 1 Malloy, *Treaties*, 20, 23, which provides in pertinent part:

In whatever relates to * * * the acquiring and disposing of property of every sort and denomination, either by sale, donation, exchange, testament or in any other manner whatsoever * * * the citizens of the two contracting parties shall reciprocally enjoy the same privileges, liberties and rights as native citizens * * *

As to the applicability of this provision to Yugoslav citizens entitled to the rights granted by Article II of the Convention (which was not questioned below) see App. G, pp. 51a, 56a, 57a, *infra*.

and *Third*, that by reason of the adherence of both the United States and Yugoslavia to the International Monetary Fund Agreement, App. E, pp. 43a-47a, *infra*, the maintenance by Yugoslavia of foreign exchange controls, consistent with such Agreement, could not in any event, be considered as a failure to meet the requirement of paragraph (b) of the Oregon statute, App. F, p. 48a, *infra*. Copies of the Convention and of the International Monetary Fund Agreement were offered by the petitioners, and received in evidence at the trial on the issues raised by the denials of their answers to the allegations of the State's petitions for escheat. R 6, 17, 55, 56, 90, 91, 279, 286. The cases were submitted to the Circuit Court after oral argument by counsel (unreported) at the conclusion of the taking of evidence. R 178, 184.

The Circuit Court rested its decision entirely on its findings that Yugoslavia in fact met all the requirements of the Oregon statute, as its orders refer to neither the Convention nor the International Monetary Fund Agreement. App. C, pp. 33a-38a, *infra*. Nevertheless, in its opening brief as appellant in the Oregon Supreme Court, the State said, R 633:

Much reliance is placed by the claimants [i.e., the petitioners here] upon the Treaty of Commerce of 1881 between the United States and Serbia, 22 Stat. 963 (Cl. Ex. 9) to which Yugoslavia is now the successor government * * *

That the State made no mention in its opening brief to the Oregon Supreme Court of the International Monetary Fund Agreement, must be considered in the light of the State's failure to refer to it in its reply brief as well, notwithstanding the reliance put on it by the petitioners in the intervening brief that they

filed as respondents in the Oregon Supreme Court.
R 735-738, 785-808.

On appeal, the Oregon Supreme Court held that the petitioners, not being in the United States, had no rights under Article II of the Convention, and, further, that notwithstanding the adherence of both the United States and Yugoslavia to the International Monetary Fund Agreement, the existence in Yugoslavia of foreign exchange controls prevented Yugoslavia from meeting the second of the requirements of the Oregon statute, without regard to whether such controls were maintained consistently with the Agreement, and on these grounds reversed the Circuit Court. 349 P.2d 255; App. A, pp. 1a-26a, *infra*.

While recognizing that rights of inheritance granted by treaty necessarily override inconsistent State laws, the Court below construed the provisions of Article II of the Convention as being applicable only to Yugoslav citizens who are within the United States, and, by necessary implication, only to American citizens who are within Yugoslavia. 349 P.2d at 263, 266; App. A, pp. 20a, 21a, *infra*. The Court below so construed Article II of the Convention notwithstanding Yugoslavia's construction of it, formally concurred in by the Department of State, as applying to *all* citizens of the United States regardless of their whereabouts, and the Department of State's parallel construction, with which Yugoslavia agrees, that it applies to *all* citizens of Yugoslavia wherever they might be. App. G, pp. 49a-62a, *infra*; R 967-983. In relying on *Clark v. Allen*, 331 U.S. 503, 514-516 (1947), the Court below misread both the treaty provision there involved and what was there held. 349 P.2d at 265; App. A, pp. 18a, 19a, *infra*. See pp. 12-15, *infra*. Moreover, in

arriving at its construction of Article II, the Court below considered only the stilted language of the Convention and failed entirely to consider that the Convention has for its express purpose "facilitating and developing commercial relations", that the provisions of the Convention which are involved, deal not merely with inheritance, but treat in identical terms with *all acquisitions and disposals of property by whatever means*, and that a construction of the Convention that would necessarily exclude from its protection in these respects, American and Yugoslav merchants remaining at home but sending their buyers and salesmen to the other country to buy and sell goods, as the Convention expressly contemplates, would defeat its very purpose. Thus, after quoting from *Clark*, 331 U.S. at 515-516, the Court below said, 349 P.2d at 266; App. A, p. 21a, *infra*:

If we correctly appraise the position of defendants, they would, notwithstanding the doctrine of *Clark v. Allen*, *supra*, have us interpret the words "in Serbia" and "in the United States," as they appear in Article II of the Treaty of 1881, as referring to the place where property rights are granted rather than to the geographical location of the person claiming them. If thus construed the provision would accord to the nationals of either party wherever resident rights similar to those enjoyed by nationals of the most favored nation wherever resident. But this we decline to do, being impressed that the construction given to the German Treaty in the *Clark* case applies with equal force to the Serbian Treaty of 1881.

* * *

Having thus disposed of the Convention, the Court below turned to the Oregon statute under which the capacity to inherit of an alien non-resident of the

United States is made to depend upon the meeting of three conditions by the foreign country "of which such alien is an inhabitant or citizen". App. F, p. 48a, *infra*. The second of these conditions requires, in substance that American citizens have

* * * rights * * * to receive by payment to them within the United States * * * money originating from * * * estates * * * within such foreign country * * *

The Court below held that American citizens had no such "rights" in Yugoslavia because of the existence in that country of foreign exchange controls, and on that ground alone held the next-of-kin (the petitioners here) without capacity to inherit. 349 P.2d at 268; App. A, p. 26a, *infra*. In reaching this conclusion, the Court held as having "no bearing on our present problem", a provision of the Yugoslav foreign exchange law that the foreign exchange regulations include "the provisions of agreements with foreign countries which are concerned with payments", even though Article II of the Convention, as construed by Yugoslavia, provides that Americans anywhere are "at liberty to export freely the proceeds of the sale of their property, and their goods in general" (R 163-165, 169, 170, 286), that the Department of State is cognizant of no case in which an American distributee of a Yugoslav estate has failed to receive payment in the United States of his distributive share (R 766-769) and, as the Court itself said, that "The record is replete with evidence of remittances from estates in Yugoslavia to persons in the United States * * *". 349 P.2d at 262; App. A, pp. 13a, 17a, *infra*. The position of the Court below was that under the Oregon statute it was immaterial whether such remittances

were *in fact* made, the statutory requirement being that Americans have legally enforceable rights to compel them, as to which the Court below found the evidence to be in "conflict". 349 P.2d at 258, 262; App. A, pp. 13a, 14a, *infra*.

The Court below rejected the contention that even if the Yugoslav foreign exchange controls, maintained or imposed consistently with the International Monetary Fund Agreement, were applicable to remittances to the United States of the distributive shares of American distributees of Yugoslav estates, the adherence of both the United States and Yugoslavia to such Agreement, precluded a State from stripping citizens and residents of Yugoslavia of their capacity to inherit solely because of the existence of such controls. The Court below said, 349 P.2d at 267, 268; App. A, pp. 23a-24a, *infra*:

The defendants * * * point to * * * Art XIV, § 4 and Art XI, § 2 [of the International Monetary Fund Agreement] which provide sanctions against any member nation which imposes foreign exchange restrictions contrary to the provisions of the agreement.

* * * * *

Article VII, § 3(b) of the agreement is also to the same tenor in recognizing that some nations will find the need to "impose limitations on the freedom of exchange operations."

* * * * *

The * * * Agreement gives no support to the thesis of defendants and, to the contrary, is in a large sense an international recognition that some countries, rightly or wrongly, would impose strictures such as are exemplified by the foreign exchange laws of Yugoslavia and Bulgaria (see *State Land Board v. Rogers, supra*).

REASONS FOR GRANTING THE WRIT

1. Whether the Yugoslav citizens to whom the United States has granted important private rights by Article II of the Convention include Yugoslav citizens who are within Yugoslavia, or only those who are within the United States, is a federal question of substance which has not been determined by this Court in the seventy-nine years that the Convention has been in force and effect. Nor is it governed by such cases as *Frederickson v. Louisiana*, 23 How. (U.S.) 445 (1860), *Petersen v. Iowa*, 245 U.S. 170 (1917), *Daus v. Brown*, 245 U.S. 176 (1917), *Skarderud v. Tar Commission*, 245 U.S. 633 (1917), or *Clark v. Allen*, 331 U.S. 503, 514-516 (1947). For, the treaty provisions with which they were concerned dealt only with rights pertaining to the *disposal* by citizens of one country of their property in the other, including its devolution on their fellow citizens, and this Court held that such a treaty gave citizens of the other country to it no rights pertaining to the inheritance by them of property in the United States of American decedents. Here, the treaty provision deals with "all that concerns the right of *acquiring*, or possessing or disposing of every kind of property, real or personal" in one country by the citizens of the other, and, more specifically, grants to citizens of each country the right "to *acquire* and dispose of such property, whether by purchase, sale, donation, exchange, marriage contract, testament, *inheritance*, or in any other manner whatever * * *".

The question here, unlike that in *Frederickson* and the cases following it, is not whether treaty provisions relating to the *devolution* of the American estates of foreigners on their fellow citizens, pertain also to the devolution on them of the American estates of American decedents, but, rather, whether the more

general treaty rights of Yugoslav citizens with respect to *acquiring* property in the United States, by any means, including inheritance, extend to Yugoslav citizens who are in Yugoslavia, as well as to Yugoslav citizens who are in the United States. There was no such question in *Frederickson*, *Peterson*, *Duus*, *Skarderud* or *Clark*, and it appears to have arisen heretofore only in *Arbulich's Estate*, 41 Cal. 2d 86, 257 P.2d 433 (1953), in which a petition for *certiorari* was denied, 346 U.S. 897, thus leaving the question undetermined by this Court.

The provision of the German treaty with which this Court was concerned in *Clark* was that, 331 U.S. at 514:

Nationals of either High Contracting Party may have full power to dispose of their personal property of every kind within the territories of the other, by testament, donation, or otherwise, and their heirs, legatees and donees, of whatever nationality, whether resident or non-resident, shall succeed to such personal property * * *

This Court held only, that while such a provision gave a German the right to dispose of his American property by will to another German, and protected the latter in his succession to *such* property, it did not give a German any treaty right to inherit the American property of an American decedent. If not identical in language, the treaty provisions involved in *Frederickson v. Louisiana*, 23 How. (U.S.) 445; *Petersen v. Iowa*, 245 U. S. 170, *Duus v. Brown*, 245 U. S. 176, and *Skarderud v. Tax Commission*, 245 U. S. 633, relied on in *Clark*, were precisely of the same tenor, and this Court's conclusions as to their scope were the same as

in *Clark*. The controversy here, however, is of an entirely different cloth.

Article II of the Convention, from which this controversy stems, provides in pertinent part, App. D, pp. 37a, 38a, *infra*:

In all that concerns the right of acquiring or possessing or disposing of every kind of property, real or personal, citizens of the United States in Serbia and Serbian subjects in the United States, shall enjoy the rights which the respective laws grant or shall grant in each of these states to the subjects of the most favored nation.

Within these limits, and under the same conditions as the subjects of the most favored nation, they shall be at liberty to acquire and dispose of such property, whether by purchase, sale, donation, exchange, marriage contract, testament, inheritance, or in any other manner whatever * * *.

They shall likewise be at liberty to export freely the proceeds of the sale of their property, and their goods in general * * *.

Unlike the treaty provisions dealt with in *Clark* and the cases it follows, the foregoing *affirmatively* grants to citizens of Serbia, i.e., Yugoslavia, the right of citizens of the most favored nation to acquire property in the United States by inheritance, *without regard to the citizenship of the decedent*. There is no question here, as in *Clark* and the others, whether the rights granted by the treaty include the right to inherit the American property of an American decedent, and no such question was raised or passed on below. Rather, the question here, is whether the citizens of Yugoslavia who are entitled to such right under the Convention, include citizens of Yugoslavia who are not within the United States, as well as those who are.

The resolution of this question depends on the construction properly to be put on the phrase "citizens of the United States in Serbia and Serbian subjects in the United States," and which is wholly unlike any language to be found in the treaties involved in *Clark* and the cases preceding it.

By a tour-de-force doing brutal violence to the German treaty with which *Clark* was concerned, the Court below attempted to assimilate the question here to that dealt with there. Thus, after quoting the provision of the German treaty set out above, p. 42, *supra*, it said, 349 P.2d at 265; App. A, pp. 18a, 19a, *infra*:

We are of the opinion that the following words and phrases found in the German Treaty of 1923: "Nationals of either High Contracting Party * * * within the territories of the other" are of the same import and meaning as the words and phrases found in Article II of the Treaty of 1881; that is, "citizens of the United States in Serbia and Serbian subjects in the United States" * * *." (Emphasis supplied.)

So might one, and with equal accuracy, quote scripture as teaching that "In the beginning * * * there was light", or the Declaration of Independence as saying, "When in the course of human events, it becomes necessary for one people to dissolve * * * the laws of nature * * *."

Moreover, the Court below not only misread the German treaty involved in *Clark*, but it misread this Court's decision, too. For, immediately following the passage from its opinion last quoted above, it said, 349 P.2d at 265; App. A, p. 19a, *infra*:

In the *Clark* case, it was held that the language of Article IV of the German Treaty applied only to nationals of either party who were *within* the territory of the other.

Nothing of the sort was decided in *Clark*. The decision there was that the treaty applied only to the succession to the American property of German decedents, and did not apply to the succession by Germans to the American property of American decedents. No question was there involved and none was there decided, as to whether the German treaty made any distinction based upon the whereabouts of either the decedent or his heir. Nor was there any such question involved or decided in *Frederickson*, *Peterson*, *Duus* or *Skarderud*.

2. The construction of Article II of the Convention by the Court below is not in accord with applicable decisions of this Court, and is directly contrary to the construction of both the Department of State and Yugoslavia that the citizens of each country entitled to the important private rights thereby granted, among them the right to acquire property in the territory of the other, by inheritance or otherwise, include all such citizens regardless of their whereabouts. The Department of State and Yugoslavia are in accord that the proper construction of Article II is that "whatever right is accorded in this country to nationals of any third country, wherever resident, with respect to the acquisition * * * of property (including the rights of inheritance * * *), shall be accorded likewise in this country to Yugoslav nationals wherever resident and irrespective of the decedent's nationality". App. G, p. 51a, *infra*. The more limited view of the Court below as to the citizens of Yugoslavia entitled to rights of inheritance in the United States under Article II of the Convention, if permitted to stand, may well invite the taking of a similarly limited view as to the American citizens entitled in Yugoslavia to the important private rights granted by Article II of the Convention.

The conduct of foreign affairs, including the honoring of treaty obligations and the protection of American rights abroad, are grave matters of national concern, and the construction put upon a treaty by both the Department of State and the other party to it, should not be upset by a contrary construction of a State court. Whether a treaty of the United States is to be construed as the Executive Branch and the other country bound thereby construe it, or is otherwise to be construed, is a matter that should be determined by *this* Court. This is particularly so where, as here, the treaty grants, in identical terms, important private rights in each country to citizens of the other, and its proper construction necessarily involves considerations of more than mere local concern.

As a matter of grammatical construction, the question is whether the words "in Serbia" and "in the United States" as used in the clause "citizens of the United States in Serbia and Serbian subjects in the United States", are descriptive, respectively, of the "citizens of the United States" and the "Serbian subjects" to whom Article II grants rights, or whether they are descriptive of the place where such citizens and subjects, respectively, have such rights. As a matter of syntax, the stilted language of this clause would seem susceptible of either construction, depending upon where the emphasis is put, either arbitrarily, or having in mind the context in which it is used, and the consequences of reading it one way or the other. The Court below gave no consideration either to context or consequences, and as in its exposition of *Clark* and the treaty provision there involved, it dealt only

with empty words, letting their substance and significance escape.

The Convention is expressly one for "facilitating and developing the commercial relations established between the two countries." App. D, p. 39a, *infra*. Article III expressly contemplates that there will be, App. D, p. 40a, *infra*,

Merchants, manufacturers, and trades people in general of one of the two contracting countries traveling in the other, or sending thither their clerks and agents * * * for the purpose of making purchases or sales or receiving commissions * * *.

It is, of course, in this context that Article II must be read. If, as the Court below has held, Article II *must* be construed as a grant of rights only to citizens of the United States who are in Yugoslavia, and only to Yugoslav citizens who are in the United States, then in large measure is its purpose frustrated. For, under such a construction, the property in one country of a merchant of the other, remaining at home and conducting his business through clerks or agents (or by mail or cable) would be wholly unprotected by Article II. There would be no assurance that his heirs living at home would succeed to it in the event of his death, and this lack of protection would extend to such property as credits with bankers and merchants resulting from sales, or established in anticipation of purchases, to goods bought but not yet exported, and goods warehoused pending sale or re-exportation. See, e.g. Articles III, and VII of the Convention, App. D, pp. 40a, 41a, *infra*. Nor would a merchant of one country so conducting his business with merchants in the other, have any assurance under Article II that he could, in the ordinary course of commercial

transactions, give or acquire title to, or even "possess" goods in the other, unless he were there, too.

In brief, if the construction of Article II of the Convention by the Court below has any validity merchants of both countries are left without those very guarantees concerning property rights that are so essential to the commercial relations that the Convention was designed to facilitate and develop. Of course, the Convention contemplated that some merchants of both countries would visit or dwell in the other; but it also contemplated, that others, necessarily the larger part, would not. And, certainly, it would seem unreasonable to suppose that the protection provided by Article II of the Convention was intended to protect merchants of one country only while dwelling or visiting in the other. But that is exactly what the construction of the Court below would do. This is not, of course, to say that Article II, in terms without limitation in that regard, is applicable only to merchants. *Techt v. Hughes*, 229 N.Y. 222, 128 N.E. 185 (1920). But the effect of its application to merchants, construed in one way or the other, is a proper test of whether the construction is the right one.

It was expressly because of such considerations that the Secretary of State, in response to a formal inquiry from the Ambassador of Yugoslavia, confirmed in a note dated April 24, 1958, that, App. G, p. 51a, *infra*:

The Department of State concurs in the Yugoslav interpretation of Article II of the 1881 Convention. That is to say, it is the opinion of the Department that Article II provides that whatever right is accorded in this country to nationals of any third country, wherever resident, with respect to the acquisition, possession or dis-

position of property (including the rights of inheritance and transfer of proceeds thereof), shall be accorded likewise in this country to Yugoslav nationals wherever resident and irrespective of the decedent's nationality.

The complete text of the Secretary's note, and of the Yugoslav Ambassador's note of April 18, 1958, to which it is in reply, both well-considered expositions of Article II of the Convention, are set out in App. G, pp. 49a-62a, *infra*.⁵

This construction of the Convention is not new. Thus, ten years earlier, when in 1948 the United States agreed with Yugoslavia to a settlement of the claims of American citizens against Yugoslavia for the taking of American property in that country, one of the objectives was to secure assurances for the future. Accordingly, Article 5 of the Settlement Agreement provided, 62 Stat. 2658; T.I.A.S. 1803:

The Government of Yugoslavia agrees to accord to nationals of the United States lawfully continuing to hold, or hereafter acquiring assets in Yugoslavia, the rights and privileges of using and administering such assets and the income therefrom within the framework of the controls and regulations of the Government of Yugoslavia, on conditions not less favorable than the rights and privileges accorded to nationals of Yugoslavia, or

⁵ This exchange of notes occurred while the State's appeal to the Court below was pending, and, indeed, after the petitioners, as respondents there, had filed their reply brief on March 28, 1958. Copies of the notes were, however, furnished to the Court below well before the case was argued on December 16, 1959. R 967-983. Certified copies of the notes have been lodged with the Clerk, and it is believed that they are "records * * *" which this Court is clearly authorized to consult * * *. *The Paquete Habana*, 175 U.S. 677, 696 (1900); see, *Neilsen v. Johnson*, 279 U.S. 47, 52 (1929).

of any other country, in accordance with the Convention of Commerce and Navigation between the United States of America and the Prince of Serbia, signed at Belgrade, October 2-14, 1881.

The Congress considered this provision as obliging Yugoslavia "to continue to grant most-favored-nation treatment to Americans in ownership and acquisition of assets in Yugoslavia", S. Rep. No. 800, 81st Cong. 2d Sess. p. 4,⁶ and it must be obvious that the United States would not have been content with a mere reference to the Convention if it had been considered that Article II, its property-rights provision, applied only to such few Americans as were, or were likely to be in Yugoslavia. But the decision of the Court below, if allowed to stand, may reduce the 1948 guarantee to just that, even though Yugoslavia, too, considered it as extending to all Americans, whether in Yugoslavia or not. App. G, pp. 58a, 59a, *infra*.

Moreover, the construction placed upon Article II by the Congress, the State Department and Yugoslavia is exactly that of its American negotiator, who, in commenting on it in an official report to the Department of

⁶ This Report was made by the Senate Foreign Relations Committee in acting favorably on the bill that became the International Claims Settlement Act of 1949, 64 Stat. 12, Tit. 22 U.S.C. Sec. 1621, *et seq.*, under which the claims against Yugoslavia were adjudicated, and the proceeds of the settlement distributed.

State, transmitted March 29, 1883, said, App. I, pp. 70a, 71a *infra*, said:

"By Commercial and Consular treaties lately concluded, *citizens of the United States have in Serbia all the rights and privileges enjoyed by subjects of other nations.*"^{6a} (Emphasis supplied.)

That the phrase in question is susceptible of two meanings cannot be gainsaid. Indeed, in the Convention itself, it is sometimes used in one sense, sometimes in the other, and in at least one provision, clearly in both. Thus, Article IV of the Convention in part provides, App. D, p. 40a, *infra*:

Citizens of the United States in Serbia and Serbian subjects in the United States shall be reciprocally exempted from all personal service, whether in the army by land or by sea; whether in the national guard or militia * * *.

They shall have reciprocally free access to the courts of justice on conforming to the laws of the country, both for the prosecution and for the defense of their rights in all the degrees of jurisdiction established by the laws. * * *

If the exemptions of the first paragraph can be said of necessity to apply only to citizens of one country who are within the other, it would nevertheless frus-

^{6a} The existence of this report in the Archives of the United States was learned of by the petitioners only late in the course of the preparation of this petition. That it is not referred to by the Secretary of State in his note of April 24, 1958, App. G, pp. 49a-53a, *infra*, may indicate that its existence was not known to the Department of State at that time. The Consular treaty, 22 Stat. 968, Tr. Ser. 320, 2 Malloy, *Treaties*, 1618, was concluded simultaneously with the Convention. A certified copy of the entire report has been lodged with the Clerk and it is believed that this Court may properly consult it. See, fn. 5, p. 13, *supra*.

trate the clear purpose of the treaty, to say that the second paragraph does *not* guarantee Americans and Yugoslavs, regardless of where they might be, free access to the courts of Yugoslavia and the United States, respectively; and any such interpretation of it must necessarily be rejected. *DeGeofroy v. Riggs*, 133 U.S. 258 (1890).

Time and time again this Court has held that "the accepted canon" requires that a treaty be construed "liberally to give effect to the purpose which animates it" so that "even where a provision of a treaty fairly admits of two constructions, one restricting, the other enlarging rights which may be claimed under it, the more liberal interpretation is to be preferred". *Barcardi Corp. v. Domenech*, 311 U.S. 150, 163 (1940); *Shanks v. Dupont*, 3 Pet. (U.S.) 242, 249 (1830); *Haucenstein v. Lypham*, 100 U.S. 483, (1880); *Jordan v. Tashiro*, 278 U.S. 123, 127 (1928); *Nielsen v. Johnson*, 279 U.S. 47 (1929); *Factor v. Laubenheimer*, 290 U.S. 276, 293, 294 (1933). With equal constancy, too, this Court has held that in construing a treaty, courts must "be careful to see that international engagements are faithfully kept and observed" and to that end, "the construction placed upon the treaty * * * and consistently adhered to by the Executive Department of the government, charged with the supervision of our foreign relations, should be given much weight." *Sullivan v. Kidd*, 254 U.S. 433, 442 (1921); *Charlton v. Kelly*, 229 U.S. 447, 468 (1913); *Factor v. Laubenheimer*, *supra*, 290 U.S. at 295.

The Court below ignored both of these principles. It gave no weight to the construction placed upon the treaty by the Secretary of State, giving as its reason only that he acknowledged, correctly enough, that his

construction could not be considered "as effecting any modification of the treaty". 349 P. 2d at 268; App. A, p. 25a, *infra*; App. G, p. 53a, *infra*. It recognized that the pivotal clause was susceptible of two meanings, but it chose the limiting rather than the liberal construction, not because it found that the sense or purpose of the Convention compelled it, but because it misread out of all recognition both *Clark v. Allen*, *supra*, and the treaty there involved. It substituted asterisks for substance and then saw similarities where only vast differences were to be found. 349 P. 2d at 265, 266; App. A, p. 19a, *infra*; see, pp. 14, 15, *supra*. In short, the decision of the Court below is not in accord with the applicable decisions of this Court and it grossly misapplies one that is wholly inapplicable. Its construction of Article II is inconsistent with the express purpose of the Convention, and if allowed to stand, would frustrate it.

3. The applicability to Yugoslav citizens who are not within the United States, of the laws of many States concerning the inheritance of property by alien non-residents of the United States, depends upon whether they are entitled to the rights granted by Article II of the Convention. In the absence of a determination of that question by this Court, there can be no assurance of uniformity in the application of the Convention by the State courts. The Yugoslav citizens who are entitled to the rights granted by Article II of the Convention, are entitled to such rights throughout the United States. But, in addition to Oregon, other States including California, Iowa, Louisiana, Montana, Nevada and Oklahoma have so-called "reciprocity" statutes under which, in substance, aliens not resident in the United States may not inherit property in such States unless

the foreign countries in which they reside accord American citizens the "reciprocal" rights therein prescribed.⁷ Other States including Connecticut and Texas have statutes dealing with the right to acquire and hold property which differentiate between resident and non-resident aliens.⁸ Still other States including Massachusetts, New York, Pennsylvania, Ohio and Wisconsin have statutes under which the distributive shares of decedent estates payable to aliens living abroad are impounded, and not permitted to be transmitted to them, unless specified conditions in the foreign countries wherein they reside are shown to meet the requirements of such statutes.⁹

Regardless of their purpose or merit, if Article II of the Convention is applicable to citizens of Yugoslavia not within the United States, these statutes are not. *Clark v. Allen*, 331 U.S. 515, 517 (1947); *Hauenstein v. Lynham*, 100 U.S. 483 (1880). But, in the absence of a determination of the question by this Court, the existence of these statutes leaves the way open for conflicting constructions of the Convention by State courts.

⁷ See, Cal. Probate Code, Sec. 259; Iowa Code, Sec. 567.8; Mont. Rev. Code, Sec. 91-520; Nev. Rev. Stat., Sec. 134.230; Okla. Stat., Sec. 60-121. Art. 1490, La. Rev. Civil Code, has apparently been held not to apply to "legal" heirs, whether taking by will or intestacy. *Succession of Herdman*, 154 La. 477, 97 So. 664 (1923).

⁸ See, Conn. Gen. Stat., Secs. 47-57, 47-58, 17-269, 45-249; Tex. (Vern.) Stat., Secs. 177, 167-172.

⁹ See, Mass. L., ch. 206, Sec. 27B; N.Y. Sur. Ct. Act, Sec. 269; Penna. (Purd.) Stat. Tit. 20, Secs. 115f, 320.737; Ohio (Page) Rev. Code, Sec. 2113.81; Wisc. (West) Stat., Sec. 318-06. It should be noted in connection with these "impounding" statutes, that Article II of the Convention contains a provision concerning citizens of each country being "at liberty to export freely the proceeds of the sale of their property, and their goods in general" from the territory of the other. App. D, pp. 39a, 40a, *infra*.

and the consequent anomaly of a treaty of the United States concerning important private rights and uniformly applicable throughout the United States, being given different meanings in different States. Thus, in contrast to the decision of the Court below, a Louisiana court, only on May 9 last, held that "the Treaty of 1881 (Article II) should be interpreted to include the nationals of both countries wherever they reside * * *". *Succession of Vlaho*, unreported, No. 366848, *Civil District Court for the Parish of Orleans*, App. II, pp. 67a, 68a, *infra*.

Moreover, so long as the question remains undetermined by this Court, the not inconsiderable delay and expense incident to showing by proof that the requirements of such State statutes have been met, made necessary by the doubt created by *Arbulich*, p. 12 *supra*, and now by the decision of the Court below, will continue seriously to burden cases of estates whose beneficiaries include Yugoslav citizens not within the United States, although grave doubts must necessarily persist as to the applicability of such statutes. See, e.g., *Spōja's Estate*, 129 Mon. 83, 282 P. 2d 452 (1955) and *Ginn's Estate*, — Mon. —, 347 P. 2d 467 (1959), where decisions in favor of Yugoslav heirs residing in Yugoslavia were based on findings of fact that the requirements of the Montana "reciprocity" statute had been met, and wholly without regard to Article II of the Convention, which is mentioned only in the dissent in the latter. The favorable decision of the Oregon Circuit Court, reversed by the Court below, was similarly based. App. C, pp. 33a-37a, *infra*. Between 1953, when *Arbulich* was decided, and 1958, in eleven northern counties of California alone, there were more than forty-five cases involving decedent

estates in which Yugoslavs not within the United States were beneficiaries. R-770-772. See also, App. II, p. 66a, *infra*.

4. Whether a State may deprive citizens and residents of foreign countries, signatories with the United States to the International Monetary Fund Agreement, of the capacity to inherit solely because such countries maintain foreign exchange controls consistent with such Agreement, is a federal question of substance which has not been determined by this Court. Some sixty-eight nations, including the United States and Yugoslavia, are parties to the Agreement and members of the International Monetary Fund which it established. Of these, all except a small minority maintain or impose foreign exchange controls which vary in stringency and extent from country to country, and from time to time, in accordance with economic necessity. By becoming a party to the Agreement and a member of the Fund, the United States necessarily gave its recognition and acceptance to foreign exchange controls maintained or imposed by other parties to it consistently with the Agreement. See, *e.g.*, Art. VIII, Sec. 2(b), App. E, p. 45a, *infra*. But what becomes of such recognition and acceptance if, as the holding of the Court below implies, each of the fifty States of the United States can put sanctions on the nations maintaining such controls, by making the citizens and residents of any such nation incapable of inheriting, or by some other device? And what becomes of the exclusive authority of the federal government in matters of foreign policy and foreign affairs? Although the Agreement is not a treaty in the Constitutional sense, the United States became a party to it pursuant to an act of Congress. Bretton Woods Agreements Act, Sec. 2; 59 Stat.

512; Tit. 22 U.S.C. Sec. 286. The adherence of the United States to the Agreement is an expression and implementation of foreign policy no less than what was involved in *United States v. Pink*, 315 U.S. 203 (1942), and the application to these petitioners of the Oregon statute for the reason given by the Court below, is no less an attempt by a State to rewrite foreign policy to conform to its domestic policies, than was the action of New York there condemned. See, *Perutz v. Bohemian Discount Bank*, 304 N.Y. 533, 110 N.E. 2d 6 (1953). In view of the large number of foreign nations that maintain exchange controls consistent with the International Monetary Fund Agreement, and the substantial number of States that have "reciprocity" statutes similar to Oregon's, the question here raised of the impact of the one upon the other, should be determined by this Court.

In *Perutz v. Bohemian Discount Bank*, *supra*, the New York Court of Appeals, expressly recalling *United States v. Pink*, *supra*, held, 110 N.E. 2d at 7, that:

A contract made in a foreign country by citizens thereof, and intended by them to be there performed, is governed by the law of that country.

* * * Our courts may, however, refuse to give effect to a foreign law that is contrary to our public policy. * * * But the Czechoslovakian currency control laws in question cannot here be deemed offensive on that score, since our Federal Government and the Czechoslovakian Government are members of the International Monetary Fund

If, then, the adherence of the United States to the International Monetary Fund Agreement, precludes a State from considering the foreign exchange con-

trols of a foreign country also adhering to the Agreement, as being contrary to its public policy, it would seem to follow that there is a substantial question whether a State may make the existence of such laws a ground for denying capacity to inherit to citizens and residents of that country, who otherwise have such capacity under the laws of the State. For, granting that in the absence of supervening treaty rights, a State may deny rights of inheritance to all aliens, or to all aliens living in a foreign country, or to aliens whose countries do not permit Americans to inherit, it does *not* follow that a State whose laws permit aliens, resident and non-resident alike, *generally* to inherit, may withhold that privilege from some non-resident aliens for reasons of public policy that conflict with policies and action of the federal government in an area committed to it exclusively by the Constitution.

Thus, in *Oyama v. California*, 332 U.S. 633 (1948), six justices concurred in striking down that part of a California land-ownership statute which treated the American citizen children of aliens ineligible for citizenship differently from other American citizens. The opinion of Court (per Vinson, C. J.) relied, in substantial measure, on the existence of federal legislation providing that in every State, all citizens of the United States shall have the same right to take and hold real property.¹⁰ 332 U.S. at 640, 646, while two of the concurring justices (Black and Douglas, JJ.) took the view, 332 U.S. at 647-650, in substance, that while a State could prohibit land ownership to *all* aliens, it could not single out for such prohibition aliens not eligible for citizenship, when the federal government, in the exercise of its exclusive authority in matters of foreign relations and immigration, had

¹⁰ Rev. Stat. Sec. 1978, Tit. 42 U.S.C. Sec. 1982.

by treaty and statute permitted such aliens to immigrate to the United States. In view of the statutory basis of the adherence of the United States to the International Monetary Fund Agreement, and the foreign policy considerations involved in such adherence, both the opinion of the Chief Justice, apparently concurred in *sub silentio* by Mr. Justice Frankfurter, and the opinion of Mr. Justice Black, concurred in by Mr. Justice Douglas, raise serious doubt whether, when the consequence is discrimination against its citizens and residents, the test of paragraph (b) of the Oregon statute here involved, App. F, p. 48a, *infra*, can be held not to be met by a foreign country which adheres to the Agreement, solely because it maintains foreign exchange regulations consistent with it.¹¹

¹¹ In this connection it should be noted that Article VI, Section 2 of the Agreement expressly permits its signatories to "exercise such controls as are necessary to regulate international capital movements . . ." and, indeed, under Section 1 of that Article, may be subject to sanctions under certain circumstances, if they do not impose such controls. App. E, p. 43a, *infra*. That the significance of this provision was understood by both the proponents and opponents of the Agreement is clear. See, e.g., the colloquy between Senator Taft and Mr. Acheson, then Assistant Secretary of State, in Hearings before the Committee on Banking and Currency, United States Senate, 79th Cong., 1st Sess., on H.R. 3314, p. 32. The control of "current international" transfers, as distinguished from "international capital" transfers, is dealt with in Article XIV of the Agreement, App. E, pp. 45a-46a, *infra*. Current international transfers are such as are made for the purchase and sale of goods, payments of interest on loans or the net income on investments, etc. Article XIX(i), App. E, p. 47a, *infra*; Hearings before the Committee on Banking and Currency, House of Representatives, 79th Cong., 1st Sess., on H.R. 2211, p. 37. Capital transfers are thus basically those where no *quid pro quo* is involved, as in the case of payments of the distributive shares of decedent estates. But even if such payments should be considered "current" transfers, their control is permitted under Article XIV of the Agreement, App. E, pp. 45a, 46a, *infra*.

CONCLUSION

The questions raised by this petition are federal questions of substance not heretofore decided by this Court. The decision of the Court below is not in accord with applicable decisions of this Court. Its construction of Article II of the Convention would frustrate its purpose, and its failure to give effect to the Agreement would subordinate federal foreign policy to a State's domestic policy.

The petition should be granted.

Respectfully submitted,

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APPENDIX

APPENDIX A.

No. 6401—January 13, 1960

IN THE SUPREME COURT OF THE STATE OF OREGON

Department 2.

IN THE MATTER OF THE ESTATE OF
JOE STOICH, DECEASED

STATE LAND BOARD, *Appellant*,

v.

KOLOVRAT, ET AL, *Respondents*.

IN THE MATTER OF THE ESTATE OF
MUHAREM ZEKICH, DECEASED

STATE LAND BOARD, *Appellant*,

y.

ZEKIC, ET AL, *Respondents*.

Appeals from Circuit Court, Multnomah County.

JAMES W. CRAWFORD, Judge.

Argued and submitted December 16, 1959.

Catherine Zorn, Assistant Attorney General, Salem, argued the cause for appellant. With her on the briefs was Robert Y. Thornton, Attorney General, Salem.

Peter A. Schwabe, Portland, argued the cause and filed a brief for respondents.

Before McALLISTER, Chief Justice, and LUSK, WARNER and SLOAN, Justices.

REVERSED.

WARNER, J.

We are presented with an appeal from decrees in the estates of Joe Stoich and Muharem Zekich, arising from

proceedings for escheat in each estate instituted by the State Land Board, hereinafter referred to as the State.

Stoich died intestate in Multnomah county on December 6, 1953, leaving as his only heirs a sister, four nephews, and three nieces, all residents of Yugoslavia.

Zekich likewise died intestate in the same county on December 17, 1953, leaving as his only heirs two sisters, two brothers, two nephews, and three nieces, who are also residents of Yugoslavia.

All the heirs of each decedent are made parties defendant and appear therein by their attorneys in fact.

Because of the similarity of basic facts and questions of law common to both proceedings, the two matters were consolidated in the probate court for the purpose of trial and later consolidated in this court for the purpose of argument.

The position of the State is: that each decedent died without heirs or next of kin entitled to receive any part of his or her relative estate. It premises its case upon ORS 111.070 (Oregon Laws 1951, ch 519, § 1).

From orders denying the State's petitions for escheat and determining the right of the several defendants as alien heirs to take their respective distributive shares in the estates to which they lay claim, the State appeals.

This is the first appeal to reach this court from orders made pursuant to ORS 111.070, *supra*. Heretofore, all of the appeals in like matters had their origin in the earlier counterpart to the present statute, namely, § 61-107, OCLA (Oregon Laws 1937, ch 399, § 1).¹

ORS 111.070, the controlling statute, provides:

“(1) The right of an alien not residing within the United States or its territories to take either real or

¹ The provisions of § 61-107, OCLA, in their entirety will be found in *State Land Board v. Rogers*, — Or —, 347 P2d 57, decided December 2, 1959.

personal property or the proceeds thereof in this state by succession or testamentary disposition, upon the same terms and conditions as inhabitants and citizens of the United States, is dependent in each case:

“(a) Upon the existence of a reciprocal right upon the part of citizens of the United States to take real and personal property and the proceeds thereof upon the same terms and conditions as inhabitants and citizens of the country of which such alien is an inhabitant or citizen;

“(b) Upon the rights of citizens of the United States to receive by payment to them within the United States or its territories money originating from the estates of persons dying within such foreign country; and

“(c) Upon proof that such foreign heirs, distributees, devisees or legatees may receive the benefit, use or control of money or property from estates of persons dying in this state without confiscation, in whole or in part, by the governments of such foreign countries.

“(2) The burden is upon such nonresident alien to establish the fact of existence of the reciprocal rights set forth in subsection (1) of this section.

“(3) If such reciprocal rights are not found to exist and if no heir, devisee or legatee other than such alien is found eligible to take such property, the property shall be disposed of as escheated property.”

Speaking generally, the principal differences between the present statute and the former one dealing with the rights of aliens to take inheritances in Oregon estates are: (1) the significant words “in like manner”² do not appear in ORS 111.070, *supra*, thereby making the reciprocal requirements of the statute read as does its California counterpart on that subject (West, Annotated California Probate Code,

² See *In Re Estate of Krachler*, 199 Or 448, 263 P2d 769, what is there said at pp. 458 et seq. concerning the important significance of the words “in like manner,” now deleted.

528 § 259): (2) the present act embraces inheritances in real, as well as personal, property; and (3) adds, as an additional condition to the taking, subsection (c) of Section 1, requiring proof that foreign heirs will receive their legacies without diminution by the government of the country where they claim citizenship.

The present act, as before, imposes on the alien non-resident heir the burden of proving the existence of the conditions precedent to qualifying one to take an inheritance in this state. These concurring conditions are: (1) that a reciprocal right existed as of the date of the decedent's death on the part of American citizens to take property from estates in the foreign country in which the alien resides, upon the same terms and conditions as the inhabitants and citizens of that foreign country; (2) that American citizens have the right to receive by payment to them within the United States moneys originating from estates in the foreign country; and (3) that the heirs and legatees in the foreign country will have the use, benefit and control of money or property originating from Oregon estates without confiscation by the foreign government.³ Failure to sustain the burden imposed upon alien heirs by the preponderance of evidence as to any one of these three items of proof of right results in defeating the claim of the alien to take under the statute. *In re Estate of Krachler*, 199 Or 448, 263 P2d 769; *State Land Board v. Rogers*, — Or —, 347 P2d 57, 59, decided December 2, 1959.

³ Because of the frequency of reference to the California statute, *supra*, the decisions made in the instant appeal and our earlier decisions, we note that the California statute is unlike the current Oregon act in two noteworthy particulars: (1) it does not require evidence of the right of an American citizen to receive payment from a foreign estate in this country; or (2) proof that an alien heir to an estate in the United States will receive money from an estate here without diminution by acts of the government of the alien heir. See § 259 of California Probate Code, *supra*.

The defendant heirs claims to have met the burden in every particular.

ORS 111.070 is, as was its predecessor, § 61-107, OCLA, a law of succession, which governs the rights of nonresident aliens to take and receive property in the estate of an Oregon decedent. *In re Estate of Krachler*, supra (199 Or at 454); *In re Knutzen's Estate*, 41 Cal2d 573, 191 P2d 747, 751. The date of death controls the succession to the property and the three required rights under ORS 111.070, supra, must be shown to have so existed under the law of the country of alien claimant as of that date. *In re Estate of Krachler*, supra, (199 Or at 453); *State Land Board v. Rogers*, supra (347 P2d at 61).

The "rights" of which we speak, as employed in the current statute, have been defined to mean an unqualified right, enforceable at law. *In re Estate of Krachler*, supra (199 Or at 455, 457 and 502), and "definitely ascertainable" *In re Arbulich's Estate*, 41 Cal2d 86, 257 P2d 433, 439. These definitions exclude the concept of a right which may in any sense be limited or dependent upon an act of discretion or grace upon the part of any governmental authority or agency.

We have also held that the second right, i.e., the right to receive, means delivery of the proceeds of an inheritance from a foreign estate, not in the country where the foreign decedent left property, but a delivery to an Oregon heir in the United States or its territories, originated and implemented by some one authorized to make distribution and delivery of inheritances to the decedent's Oregon heir. *State Land Board v. Rogers*, supra. Moreover, the second right is not reciprocal in character; that is to say, it is not dependent upon the existence of a law of the foreign country that the alien heirs and nationals of that foreign country who take from an Oregon estate must receive delivery of their Oregon legacy within the territory of that country. It is only the "right to take" which must be reciprocal in

character. *State Land Board v. Rogers*, supra (347 P2d at 60).

In determining this appeal, we find it only necessary to address ourselves to the question of the existence or non-existence of the second right under the Yugoslavian law; that is, whether there is a certain and enforceable right vested in American citizens to receive the proceeds of a Yugoslavian inheritance in this country.

At the outset, we note that the defendants have placed much in the record concerning laws, regulations and customs prevailing in Yugoslavia at the time of the trial (April, 1957) which may have come into existence subsequent to December, 1953 (the crucial date for the determination of the rights of the Yugoslavian heirs to take the estates involved in this proceeding). It is, therefore, not always clear to us whether all of the given matter reflected by approximately 85 documents apply to things existing in December, 1953, or to matters arising thereafter. This is well exemplified with reference to the current Article 8 of the Yugoslavian Foreign Exchange Law upon which the defendants rest no small part of their argument, and to which we will later make fuller reference.

The exchange laws and regulations of a given country have been recognized or treated as conclusively determinative of an Oregon citizen's right to receive his inheritance "within the United States or its territories." *In re Estate of Krachler*, supra (199 Or at 478); *State Land Board v. Rogers*, supra (347 P2d at 61).

The Yugoslavian Law Regulating Foreign Payments (Foreign Exchange Law), hereinafter referred to as the Law, as it was in 1947, and being the Law of Foreign Exchange as adopted in 1945, is set out in substantial entirety in *In re Arbulich's Estate*, supra (257 P2d at 438-439).⁴

⁴ The pertinent articles of the Foreign Exchange Law, as disclosed in *In Re Arbulich's Estate*, supra (257 P2d at 438-439) read:

Footnote 1, continued

“Article 1

“All financial transactions with foreign countries, as well as all transactions within the country in relation to foreign countries that may affect the development of the credit balance of our country and the international value of our domestic currency (foreign exchange transactions) are subject to the control of the Federal Minister of Finance (foreign exchange control).

“Article 2

“Primarily the following transactions are subject to control:

“(a) All transactions within the country and with foreign countries: in foreign exchange, claims and debts in foreign currency and other values in foreign currency;

“(b) All transactions with foreign countries: in domestic currency, credits and debts in domestic currency and other values in domestic currency;

“(c) All transactions with foreigners within the country, causing changes in property relations between our country and foreign countries; and * * *

“Article 3.

“The term *transaction* from Articles 1 and 2 as used in this law means the transfer of values and metals and payments, it also means the establishment, cancellation and change of obligations and actual rights to values and metals, as well as changes of holders of rights and obligations.

“Article 4

“Permission must be had for transactions described in Articles 1 and 2 of this Law according to foreign exchange regulations.

“Article 5

“It is forbidden to conclude business in the country the amount of which in domestic currency is tied to gold or some foreign currency. * * *

“Article 6

“(1) The Federal Minister of Finance as the supreme foreign exchange authority, exercises his control over foreign exchange through: [various agencies] * * *

“(2) The Federal Minister of Finance regulates the limits of jurisdiction as between the foreign exchange authorities in regard

Footnote 1, continued

to the exercising of foreign exchange control, be it by Regulations from Article 25 of this Law, or by separate decisions.

Article 7

"(1) Transactions, subject to foreign exchange control according to this Law, may be conducted only by persons and establishments authorized to do so by the competent foreign exchange authorities, unless the conduct of such business is permitted by the foreign exchange rules themselves.

Article 8

"The National Bank, whenever authorized by the Federal Minister of Finance, may at any time request the holders in the country to offer for sale to the National Bank all their foreign exchange (regardless whether it be in the shape of claims in foreign currency, checks, drafts, et c.), foreign currency, foreign values and precious metals. If the National Bank decides to buy, it shall fix the terms, * * *

Article 12

"(1) The term '*devisa*' as used in the foreign exchange regulations means a claim abroad on whatever basis, in whatever currency, regardless of the manner of disposal * * *.

Article 13

"(1) The term *foreigners* as used in this Law means all persons and corporations with permanent residence or seat abroad, regardless of citizenship of persons and ownership of enterprises.

"(2) The term *domestic persons* means all persons and corporations with permanent residence or seat within the country, regardless of citizenship of persons and ownership of enterprises.
* * *

Article 16

"(1) The penalties for foreign exchange infractions are: * * *

"2. Confiscation of objects or values constituting the foreign exchange infraction, in full or in part. * * *

"(2) The Federal Minister of Finance shall pronounce penalties.

Article 25

"The Federal Minister of Finance shall issue more detailed rules, regulations and decisions for the execution of this Law, upon consulting the National Bank. * * *

Since 1945 is it evident from the following recital in the certificate accompanying Exhibit 30 that the Law was amended in 1946, 1951 and 1954. This certificate reads:

"In the Federal People's Republic of Yugoslavia are in force:

"1

"The Law regulating foreign payments (Foreign Exchange Law) published in the 'Official Gazette' of the FPR of Yugoslavia No. 86 of October 23, 1946, corrected and changed on the 8th October 1951 ('Official Gazette of the FPR of Yugoslavia' No. 46 1951) and on the 26th January 1954 ('Official Gazette of the FPR of Yugoslavia' No. 5 1954) which reads as follows:

Notwithstanding this element of uncertainty as to what precisely was the Foreign Exchange Law in December, 1953, in contrast to what it was in 1947, we find upon examination little change in substance or legal effect wrought by the amendments made since 1947. Because of defendants' failure to supply the record with copies of the amendments, showing when made or other evidence of like character, we feel justified in assuming that the 1945 Exchange Law remained in effect during December, 1953. *Rusk v. Montgomery*, 80 Or 93, 101, 156 P 435; *Weygandt v. Bartle*, 88 Or 310, 317, 171 P 587; 31 CJS 744, Evidence § 124(4). See, also, *State ex rel. Grismer v. Merger Mines Corp.*, 3 Wash2d 417, 101 P2d 308, 310, where the rule is applied to the law of a foreign jurisdiction; *Martinez v. Gutierrez* (Tex), 66 SW2d 678; 31 CJS, supra, at 769.

Subsections (a), (b) and (c) of Article 2 of the Law of 1945, and as it was in 1946, single out the following transactions as the primary subjects of control:

"Primarily the following transactions are subject to control:

"(a) All transactions within the country and with foreign countries: in foreign exchange, claims and

debts in foreign currency and other values in foreign currency;

“(b) All transactions with foreign countries; in domestic currency, credits and debits in domestic currency and other values in domestic currency;

“(c) All transactions with foreigners within the country, causing changes in property relations between our country and foreign countries; and * * *.”

The changes between Articles 1 and 2 of the Law of 1945 and as the same numbered articles appear in Exhibit 30 are immaterial.

In re Arbutich, to which we have made several previous references (decided May 26, 1953), is one of especial force and significance here. It was a proceeding to determine heirship in the estate of a California decedent which was claimed by a brother residing in the United States and by another brother who resided in and was a national of Yugoslavia. The decedent and the brother residing in California were former nationals of that country. The Superior Court entered a judgment to the effect that the brother residing in the United States was entitled to distribution of the entire estate. The Yugoslavian brother appealed. The Supreme Court held that evidence was sufficient to support the finding that on March 21, 1947, when decedent died, the rights of inheritance prescribed by § 259 of the California Probate Code did not exist with respect to either real or personal property as between the residents and citizens of the United States and Yugoslavia. Among other documents of importance before the court was the Foreign Exchange Law which we now review.

The court took notice of the amendments made to the 1945 Law in October, 1946, referring particularly to Article 24, as so amended (257 P2d at 439), saying:

“The second decree, effective October 25, 1946, confirms the decree of September 7, 1945, and amends it

in various respects which appear to be largely immaterial here. However, Article 24 of the second decree [i.e., October, 1946], provides that 'The Minister of Finance of FPRY is herewith authorized to issue regulations, instructions, orders and decrees, for the execution of this law,' * * *."

We, therefore, feel warranted in saying that Article 24, as thus referred to in Arbulich, is identical with Article 24 as found in Exhibit 30 of the instant matter and the slight differences appearing may be credited to differences in translation. This justifies our conclusion that Article 24, as above quoted in Arbulich, was an integral and important element of the Law in December, 1953.

The court, continuing, stated:

"Appellant urges that the 'Foreign Exchange Law' has no materiality in relation to the question of reciprocity; that it is merely 'regulatory of foreign exchange and has no reference whatever to rights of inheritance.' But a reading of entire substance of the documents mentioned makes it apparent that the trial court was justified in reaching the conclusion that under Yugoslav law a citizen of the United States, at the time of decedent's death, had no definitely ascertainable and enforceable right to *receive* Yugoslav property by testament, and that the receipt of any such property would depend in each case upon the largely, if not entirely, uncontrolled discretion of the Minister of Finance. This is far different from a standardized regulation which might merely delay the transmission of gold, money, or other stores of value from one nation to another. * * * " (257 P2d at 439)

We also say, as did the California court, the Law has the effect of "confirming the apparently unlimited power of the Minister of Finance over foreign exchange transactions" and the absence of any "definitely ascertainable and enforceable right to *receive* Yugoslav property by testament, and that the receipt of any such property would de-

pend in each case upon the largely, if not entirely, uncontrolled discretion of the Minister of Finance."

The rules authorized by Article 25 of the Law for the implementation of the regulation of foreign payments (hereinafter referred to as the Rules) are found in Exhibit 31. They capture and intensify the absolute control of foreign exchange which the Law reposes in the Minister of Finance. This is illustrated by pertinent parts included in marginal footnote.⁵

"Foreign Exchange Regulations

"Article 1

"Foreign exchange operations can be pursued only in accordance with the foreign exchange regulations, as well as authorization and permits delivered on the basis of the said regulations.

"Article 2

"1. The export of any means of payment and securities both in domestic and foreign currency, in any form (effective currency, foreign exchange, securities, coupons, etc.), both directly or indirectly (through other persons, the postoffice, etc.) *is not allowed without the permission of the competent foreign exchange authorities*, issued in conformity with the foreign exchange regulations. The export is exceptionally allowed in cases which are regulated in general, by the foreign exchange regulations (for instance, in passenger traffic).

"2. From foreign exchange regulations are exempted all exports of values enumerated in the present Article, effected by the Federal Ministry of Finance and the National Bank.

.

"Article 12

"1. Foreign exchange operations may be pursued exclusively on the basis of permits issued by the competent foreign exchange authorities, if these operations are not allowed by the foreign exchange regulations themselves.

.

"3. Likewise, all claims abroad which are not specifically mentioned in the foreign exchange regulations can be settled only

The record is replete with evidence of remittances from estates in Yugoslavia to persons in the United States and the testimony of Yugoslavian consular representatives and experts called by the defendants concerning the movement of such funds, all offered as proof that American citizens have in the past received their legacies by delivery in the United States. This phase of the case is further amplified by self-serving declarations of the same tenor from Yugoslavian diplomatic representatives to the State Department and documents emanating from officials in that country. Much of this is immaterial, having dates subsequent to December, 1953, or lacking of any identifying dates; some are deficient in other respects which are unnecessary to note because we are compelled to reject all evidence of this character as legally inconclusive of the problem we now have under consideration. Moreover, the testimony of the Yugoslavian officials, including the diplomatic correspondence referred to, serves at most to create a conflict in the evidence as to the ultimate fact of whether or not there exists as a *matter of law an unqualified and enforceable right to receive* as defined by ORS 111.070, *supra*. Nor is this answered by evidence that some American citizens have enjoyed the "right to receive" the proceeds of their respective inheritances in whole or in part. The real test is whether *all* American citizens under the law of Yugoslavia can demand and enforce that right under the law in contradistinction to a dependency upon the good will or gracious indulgence of some official of that country.

after the permission of the Banking and Currency Department of the Federal Ministry of Finance has been obtained.

"Article 13

• • • • •

"3. Foreign exchange operations depending on the authorization of foreign exchange authorities can be pursued exclusively by the persons to whom these permits have been issued on the basis of original permits." (Emphasis ours.)

Even if it can be said these items of evidence do reveal a flow of exchange from Yugoslavia to American heirs as of December, 1953, they, at the most, only attest the indulgence of the Yugoslavian authorities as to the American heirs as of that time. Certainly, as discretionary acts, permissible under the Law, they do not evidence the presence of an unqualified and enforceable right to receive by delivery of funds in the United States to citizens thereof under the foreign exchange laws and regulations of that country in 1953. The fact that some American citizens were so favored does not preclude wonderment as to how many may have been denied "the right to receive" or, indeed, whether those who did receive moneys by exchange, received all or only a part thereof. This line of evidence has many of the characteristics noted by Mr. Justice BRAND in the *Krachler* case, *supra* (199 Or at 499-502). What was done yesterday "as a matter of course" in the exercise of powers of discretion may not be the rule or custom of tomorrow. *State Land Board v. Rogers*, *supra* (247 P2d at 63).

Unless the area of alien succession over which the state of Oregon seeks to control through ORS 111.070, *supra*, has been preempted by some treaty agreement subsisting between Yugoslavia and the United States as of December, 1953, we are of the opinion that both the Yugoslavian Foreign Exchange Laws and Regulations extant as of that date operate as a denial of the claims of the defendants.

We are mindful that rights of succession to property under local law may be affected by an overriding federal policy when a treaty makes different or conflicting arrangements. In such event, the state policy must give way. *Clark v. Allen*, 331 US 503, 517, 91 L ed 1633, 1645, 67 S Ct 1431.

By way of circumventing the adverse effect of the Yugoslavian Law and Regulations, the defendants place great reliance upon their interpretation of Article II of the Convention for Facilitating and Developing Commercial Re-

lations (sometimes called the Convention of Commerce and Navigation and by us hereinafter called the Treaty of 1881) as concluded on October 2/14, 1881, between the United States of America and Serbia (now a constituent part of Yugoslavia" (22 Stat 963, Treaty series 319). It is before us at Exhibit 9.

Article II of the Treaty of 1881 reads:

"In all that concerns the right of acquiring, possessing or disposing of every kind of property, real or personal, citizens of the United States in Serbia and Serbian subjects in the United States, shall enjoy the rights which the respective laws grant or shall grant in each of these states to the subjects of the most favored nation.

"Within these limits, and under the same conditions as the subjects of the most favored nation, they shall be at liberty to acquire and dispose of such property, whether by purchase, sales, donation, exchange, marriage contract, testament, inheritance, or in any other manner whatever, without being subject to any taxes, imposts or charges whatever, other or higher than those which are or shall be levied on natives or on the subjects of the most favored state.

"They shall likewise be at liberty to export freely the proceeds of the sale of their property, and their

"Its present and continuing effectiveness is attested by The Settlement of Pecuniary Claims Against Yugoslavia Agreement between the United States of America and that country of July 19, 1948 (Exhibit 7 herein), as is confirmed by Article 5, reading:

"The Government of Yugoslavia agrees to accord to nationals of the United States lawfully continuing to hold, or hereafter acquiring assets in Yugoslavia, the rights and privileges of using and administering such assets and the income therefrom within the framework of the controls and regulations of the Government of Yugoslavia, on conditions not less favorable than the rights and privileges accorded to nationals of Yugoslavia, or of any other country, in accordance with the Convention of Commerce and Navigation between the United States of America and the Prince of Serbia, signed at Belgrade, October 2-14, 1881."

goods in general, without being subjected to pay any other or higher duties than those payable under similar circumstances by natives or by the subjects of the most favored state."

Proceeding on the theory that Article II of the Treaty of 1881 embraces the "right to receive," as well as the "right to take," the respondents rely on Article 8 of the Law, supra, offered by them as Exhibit 28 as an exception to the operation of the Foreign Exchange Law in so far as the "provisions of agreements with foreign countries are concerned with payment." The provisions of Article 8 of the current Law as reflected by that exhibit read:

"The term 'foreign exchange regulations' refers to the provisions of the present Law, to the provisions of the Rules for the implementation of the present Law, to the orders, instructions and decisions of the Ministry of Finance of the FPR of Yugoslavia, made on the basis of the present Law; to all the regulations relating to the control of imports and exports enacted by the Minister of Foreign Trade of the FPR of Yugoslavia, as well as to the provisions of agreements with foreign countries which are concerned with payments."

As we have previously observed, at pages 438 and 439 of *In re Arbulich's Estate*, supra, there is spread with great detail the Yugoslavian Foreign Exchange Law as it was at that time. Comparing Article 8 of the Law as it was then with the current Article 8 of the same Law indicates some amendments since 1947. But when? Was Article 8, as above quoted, in effect in December, 1953, or was it so enacted subsequent to that time? Although pressed by counsel for the state, the defendants' witness Temer, the Consul General of the Yugoslavian Consulate at San Francisco, was unable to say whether the current Article 8 of the Law was effective in December, 1953.

Assuming arguendo that the current Article 8 of the Law was prevailing in December, 1953, we find no difficulty in

concluding that it gives some recognition to the provisions of Article II of the Treaty of 1881. But it is only to the extent that Article II has any impact upon the "right to receive" as defined by ORS 111.070, *supra*, would the later Article 8 become a matter of interest. We think, notwithstanding what may be the date of its enactment, that it has no bearing on our present problem.

Clark v. Allen, *supra*, decided June 9, 1947, becomes a holding of prime interest in this matter in that it was precipitated by a proceeding initiated under § 259, California Probate Code, as it was in 1942. It will be remembered that section bears upon the rights of aliens not residing in the United States to take real or personal property in the state of California.⁷ And for the further reason that it construes a treaty provision similar to Article II of the Treaty of 1881.

In the *Clark* case, Alvina Wagner, a resident of California, died in 1942. She left real and personal property situated in that state. By a will, dated December 23, 1941, she bequeathed her entire estate to four relatives who were nationals and residents of Germany. Six heirs at law, who were residents of California, filed a petition for determination of heirship in the probate proceeding, claiming that the German nationals were ineligible as legatees under § 259, *supra*, of the California Probate Code. It appears that at the time of the decision in *Clark*, there had never been a hearing on that petition. This, for the reason that in 1943 the Alien Property Custodian vested in himself all right, title and interest of the German nationals in Mrs. Wagner's estate. The Property Custodian thereupon instituted an action in the U. S. District Court against the executor under the will and the California heirs at law for a determination that the California heirs had no interest in the estate and that he was entitled to the entire net estate upon

⁷ Sections 259 and 259.2 of the California Code, *supra*, are identical with ORS 111.070 (1) (a) and (b) and subsection (3).

the conclusion of the administration. The District Court granted judgment for the Custodian on the pleadings (52 F Sup 850). The Circuit Court of Appeals reversed, holding that the District Court was without jurisdiction of the subject matter (147 F2d 136). The case went thence to the Supreme Court on certiorari where it was held that the District Court had jurisdiction of the suit and remanded the cause to the Circuit Court of Appeals (9th CC) for consideration on the merits (326 US 490). The Circuit Court of Appeals thereafter held for the California heirs (156 F2d 653). The case was returned again to the Supreme Court on a petition for a writ of certiorari which was granted on the ground that the issues raised were of national importance.

The defendants concede that the Clark case over the years has, since its pronouncement, in 1947, come to be regarded as "the cornerstone of the entire reciprocal inheritance rights structure as it was the first major decision by a court of last resort on the California reciprocity statute."

In *Clark v. Allen*, supra, the court was called upon to construe Article IV of the Treaty of Friendship, Commerce and Consular Rights made with Germany December 8, 1923 (44 Stat 2132). It had different provisions relating to the testamentary disposition of realty and personalty. Article IV of the Treaty, which is the provision of our interest, contained the following provisions as to the disposition of personalty:

"Nationals of either High Contracting Party may have full power to dispose of their personal property of every kind within the territories of the other, by testament, donation, or otherwise, and their heirs, legatees and donees, of whatsoever nationality, whether resident or non-resident, shall succeed to such personal property, and may take possession thereof, either by themselves or by others acting for them, and retain or dispose of the same at their pleasure subject to the payment of such duties or charges only as the nationals

of the High Contracting Party within whose territories such property may be or belong shall be liable to pay in like cases." (Emphasis ours.) (91 L. ed at 1644)

We are of the opinion that the following words and phrases found in the German Treaty of 1923: "Nationals of either High Contracting Party * * * within the territories of the other" are of the same import and meaning as the words and phrases found in Article II of the Treaty of 1881; that is, "citizens of the United States in Serbia and Serbian subjects in the United States," a phrasing which the defendants ascribe to Victorian English.

In the Clark case, it was held that the language of Article IV of the German Treaty applied only to nationals of either of the party nations who were *within* the territory of the other. Mr. Justice Douglas speaking for the court, says at 61644 L. ed:

"* * * In case of personalty, the provision governs the right of 'nationals' of either contracting party to dispose of their property within the territory of the 'other' contracting party; and it is 'such personal property' that the 'heirs, legatees and donees' are entitled to take.

"Petitioner, however, presents a detailed account of the history of the clause which was not before the Court in *Frederickson v. Louisiana*, 23 How (US) 445, 16 L. ed 577, *supra*, and which bears out the construction that it grants the foreign heir the right to succeed to his inheritance or the proceeds thereof. But we do not stop to review that history. For the consistent judicial construction of the language since 1860 has given it a character which the treaty-making agencies have not seen fit to alter. And that construction is entirely consistent with the plain language of the treaty. We therefore do not deem it appropriate to change that construction at this late date, even though as an original matter the other view might have much to commend it.

"We accordingly hold that Article IV of the treaty does not cover personalty located in this country and

which an American citizen undertakes to leave to German nationals. . . .

The Supreme Court of California also had before it the provisions of Article II of the Treaty of 1881 in the *Arbulich* case, *supra*, which were there urged, as here, as applicable and controlling in favor of the appellant brother. Concerning this, Mr. Justice Schauer, who spoke for the court, stated:

"Appellant contends, nevertheless, that the provisions of Article II of a treaty entered into in 1881 between the United States and the Kingdom of Serbia, 22 Stat. 964 (of which the present Republic of Yugoslavia is the successor government) and certified by the Secretary of State of the United States as remaining in full force and effect between this country and Yugoslavia, are applicable and controlling in appellant's favor on the issue of reciprocity. It may be noted that the first paragraph of Article II seemingly treats only of 'citizens of the United States in Serbia [Yugoslavia] and Serbian [Yugoslav] subjects in the United States,' rather than, as is the situation in the present case, of a United States citizen who dies in the United States and leaves property to a Yugoslav subject who is in *Yugoslavia*, and therefore is not here applicable. Even if we assume its applicability in that respect, however, the rights granted are only those given by each of the contracting nations 'to the subjects of the most favored nation,' and do not purport to equal the rights given or guaranteed by each of the contracting nations to *its own* citizens. Consequently the treaty provisions do not establish the reciprocal rights required by the Probate Code." (257 P2d at 437)

In that holding, we find the California court, and we think rightly, following the pattern of interpretation accorded the German treaty before the United States Supreme Court six years before in *Clark v. Allen*, *supra*. We take notice that a writ of certiorari in *Arbulich* was denied by the Supreme Court of the United States (345 US 897, 98 L ed 398, 74 S Ct 219) and later a petition for leave to file a peti-

tion for rehearing was also denied (347 U.S. 908, 98 L. ed 1006, 74 S. Ct 426).

If we correctly appraise the position of defendants, they would, notwithstanding the doctrine of *Clark v. Allen*, supra, have us interpret the words "in Serbia" and "in the United States," as they appear in Article II of the Treaty of 1881, as referring to the place where property rights are granted rather than to the geographical location of the person claiming them. If thus construed the provision would accord to the nationals of either party wherever resident rights similar to those enjoyed by nationals of the most favored nation wherever resident. But this we decline to do, being impressed that the construction given to the German Treaty in the Clark case applies with equal force to the Serbian Treaty of 1881, and as also held in *Arbulich's Estate*.

At the time of *In re Arbulich*, as well as in 1953, the California state code (see § 259 California Probate Code) carried no provision comparable to subsection (3) of § 1 of ORS 111.070, requiring, as does the Oregon statute, the right "to receive by payment to them within the United States or its territories money originating from the estates of persons dying within such foreign country." The right to receive as discussed by the court in *Arbulich*, was without the mandatory direction of the California act or that it be a receipt by delivery in the United States. In this respect, the Oregon act is much more stringent than the provisions of the California Probate Code or similar codes that have come to our attention. It is a difference which may well account for the ruling of the Los Angeles Superior Court of California in *Miloglav's Estate*, No. 301394, May 5, 1954, and which comes to our notice via defendants' Appendix F.

We are not informed as to the reasons which prompted the reenactment of subsection (b) of § (1) of ORS 111.070 in 1951, and as it was in § 61-107, OCLA, nor the new pro-

vision, subsection (c), of the same section of the present act relating to assurances that foreign beneficiaries of an Oregon estate receive the avails of their shares without confiscation by the government of the country in which said beneficiaries resided. But whatever was the legislative purpose, whether to circumvent then known practices of certain governments by way of diminishing or confiscating inheritances received by some of their citizens from Oregon estates or in barring the free movement of foreign inheritances to Oregon beneficiaries, we think it was clearly within the legislative province to prescribe the various conditions found in ORS 111.070. The protective solicitude by our legislature demonstrated by the provisions of ORS 111.070 in behalf of Oregon citizens is extended to alien heirs residing in foreign countries who inherit in Oregon. In short, the net result when observed, at least on the part of the state of Oregon, brings ORS 111.070 more in harmony with the spirit of the international agreements as contended for by defendants than their interpretation of those treaties demand. In effect, subsections (b) and (c) of § (f) of that statute place local heirs and alien heirs on a parity by insuring to each the full measure of their respective inheritances. We deem both of these conditions a reasonable exercise of legislative power, and in no sense trespassing upon any international treaty or agreement brought to our attention, but to the contrary implementing the spirit, if not the letter, of such accords.

In arriving at our conclusions, we have given attention to the terms of what is commonly known as the Bretton Woods Agreement of 1944, cited by the defendants. Yugoslavia was one of the 44 participating governments at the United Nations Monetary and Financial Conference of that year. Later, it became one of the signatories to the Articles of Agreement formulated as the final act of the conference. The major features of the final document provided for establishment of the International Monetary Fund and of the International Bank for Reconstruction and Develop-

ment. It is common knowledge that the conference was motivated by the then prevailing international apprehension world economy would suffer seriously as an aftermath of World War II unless some devices to stabilize it were quickly undertaken by the world powers. This thought is clearly affirmed by Article I of that agreement, wherein its controlling purposes and objectives are stated.

The defendants, however, point to its Art XIV, § 4 and Art XI, § 2, which provide sanctions against any member nation which imposes foreign exchange restrictions contrary to the provisions of the agreement. Although not fully developed by defendants' argument, the inference is that a foreign exchange system of controls and regulations was established thereby which would nullify the restrictive character of the Yugoslav Foreign Exchange Law and implementing Regulations. The contrary is clearly evident from a reading of the entire agreement. It is replete with expressions recognizing the want of economic parity between the signing nations and the relative difficulties of some of the lesser nations in maintaining a sound monetary system, and definitely places them in an exceptional class. We turn for the moment to one of the very articles to which they point. It is significantly captioned "Transitional Period." Section 2 of that article is subcaptioned "Exchange Restrictions." Its provisions are spread in marginal note.⁸

"In the post-war transitional period members may, notwithstanding the provisions of any other articles of this Agreement, maintain and adapt to changing circumstances (and, in the case of members whose territories have been occupied by the enemy, introduce where necessary) restrictions on payments and transfers for current international transactions. Members shall, however, have continuous regard in their foreign exchange policies to the purposes of the fund; and, *as soon as conditions permit*, they shall take all possible measures to develop such commercial and financial arrangements with other members as will facilitate international payments and the maintenance of exchange stability. In particular, members shall withdraw restrictions maintained or

Article VII, § 3(b) of the agreement is also to the same tenor in recognizing that some nations will find the need to "impose limitations on the freedom of exchange operations."

The Bretton Woods Agreement gives no support to the thesis of defendants and, to the contrary, is in a large sense on international recognition that some countries, rightly or wrongly, would impose strictures such as are exemplified by the foreign exchange laws of Yugoslavia and Bulgaria (see *State Land Board v. Rogers*, supra).

By way of weakening or equivocating the applicability of *Clark v. Allen*, supra, we are cited the opinions of the California Attorney General, dated July 15, 1942, listing foreign nations of that time with whom the Attorney General deemed reciprocal inheritance rights existed by reason of treaties. This listing included Yugoslavia. Notwithstanding that such compilation was then made by the now Chief Justice of the United States, its persuasive value as to that nation was nullified 11 years later by *In re Arbulich's Estate* (1953). They also rely upon an opinion of the Oregon Attorney General given in 1938 (19 Op Atty Gen 136) to the same effect. But we are informed by the State's brief in this matter that this opinion has been abandoned by that office since the holding of *Clark v. Allen*, supra, in 1947.

Much of defendants' argument rests upon the mistaken premise that "the right to receive," which is the sole right to which we give attention in this matter, is reciprocal in character. This is contrary to the conclusion of *State Land Board v. Rogers*, supra. It is only "the right to take" that demands reciprocal legislation in a foreign country. This is but another reason why we do not find the provisions of

imposed under this Section as soon as they are satisfied that they will be able, in the absence of such restrictions, to settle their balance of payments in a manner which will not unduly encumber their access to the resources of the Fund." (Emphasis ours.)

ORS 111.070 impinging upon any treaty existing between the United States and Yugoslavia.

During the course of the oral argument, counsel for the defendants laid great stress upon two diplomatic notes exchanged by the State Department and the Embassy of Yugoslavia. We were there led to believe that their net result was equivalent to a bilateral modification of the Treaty of 1881, giving to it a construction contrary to the doctrines as expressed in *Clark v. Allen*, supra; and *In re Arbulich's Estate*, supra.

This exchange was had in April, 1958, and hence not a part of the record of the trial court when it entered its decree in this matter in April, 1957. The defendants bring these notes to our attention via the filing of a supplemental brief. We pass the question of the propriety of bringing matters of that kind to this court under the circumstances, but observe they do not have the force and effect claimed for them even if they were ever properly made a part of the record. This is made patently manifest by the concluding paragraph of the note from the State Department in response to the query from the Yugoslavian Embassy, where it stated:

"This note, of course, is not to be considered as having the character of an international agreement or as effecting any modification of the treaty [The Treaty of 1881]."

We hold that the provisions of ORS 111.070 relating to the right of American citizens to receive a foreign inheritance by delivery in the United States or its territories, does not do violence to any treaty subsisting between this country and Yugoslavia in December, 1953. We also hold that the Yugoslavian Foreign Exchange Law and Foreign Exchange Regulations enacted pursuant thereto as they were as of that date negative the concept of an unqualified and enforceable right to receive delivery of Yugoslavian

inheritance in this country by an American citizen, but to the contrary make its receipt dependent upon the grace or sufferance of a Yugoslavian authority.

These conclusions make it unnecessary for us to give consideration to the claim of the defendants concerning the right of American citizens to take or inherit under Yugoslavian law or the sufficiency of the proof relating to the right of Yugoslavian citizens to receive an American inheritance without diminution by the government of that country. The failure to prove the legal existence of any one of the three conditions required by ORS 111.070 defeats the claims of succession to an Oregon inheritance.

The decree is reversed. Each party will pay own costs.

APPENDIX B

BE IT REMEMBERED that at a regular term of the Supreme Court of the State of Oregon begun and held at the court room in the city of Salem on the first Monday, the 5th day of October, 1959. WHEREUPON on this Tuesday, the 1st day of March, 1960, the same being the 46th judicial day of said term, there were present:

Wm. M. McAllister, Chief Justice,
 George Rossman, Associate Justice,
 Hall S. Lusk, Associate Justice,
 Harold J. Warner, Associate Justice,
 William C. Perry, Associate Justice,
 Gordon W. Sloan, Associate Justice,
 Kenneth J. O'Connell, Associate Justice,
 F. M. Sercombe, Clerk,

when the following proceedings were had:

Appeals from Multnomah County

In the Matter of the Estate of
 Joe Stoich, deceased.

STATE OF OREGON, acting by and through the State Land
 Board, *Appellant*

v.

ANLIA KOLOVRAT, et al, *Respondents*

In the Matter of the Estate of
 Muharem Zekich, deceased.

STATE OF OREGON, acting by and through the State Land
 Board, *Appellant*

v.

LUTVO ZEKIC, et al, *Respondents*

The Court having duly considered respondents' petition for rehearing, and the Court being fully advised thereon,

IT HEREBY IS ORDERED that such petition be and the same hereby is denied.

BE IT REMEMBERED, that at a regular term of the Supreme Court of the State of Oregon, begun and held at the court room in the city of Salem on the first Monday, the 5th day of October, 1959. WHEREUPON on this Wednesday, the 13th day of January, 1960, the same being the 28th judicial day of said term, there were present:

Wm. M. McAllister, Chief Justice,
 George Rossman, Associate Justice,
 Hall S. Lusk, Associate Justice,
 Harold J. Warner, Associate Justice,
 William C. Perry, Associate Justice,
 Gordon W. Sloan, Associate Justice,
 Kenneth J. O'Connell, Associate Justice,
 F. M. Sercombe, Clerk,

when the following proceedings were had:

Appeal from Multnomah County

In the Matter of the Estate of
 Joe Stoich, deceased.

STATE OF OREGON, acting by and through the State Land
 Board, *Appellant*

v.

ANĐIJA KOLĐVRAT, DRAGO STOJIC, DRAGICA SUNJIC, NEĐA
 TURK, JOSIP BULGAN, JURE ZIVANOVIC, MARA TOLIC and
 MILAN STOJIC, and also BRANKO KARADZOLE, Consul
 General of Yugoslavia at San Francisco, California,
Respondents

This cause on December 16, 1959, having been duly argued
 and submitted upon and concerning all questions arising
 upon the transcript and record and then reserved for
 further consideration, and the Court having fully consid-

ered all said questions as well as suggestions of counsel in their argument and briefs finds there is error as alleged.

IT THEREFORE IS CONSIDERED, ORDERED and DECREED that the decree of the court below rendered and entered in this cause be and the same is in all things reversed and set aside.

IT FURTHER IS ORDERED that each party pay his own costs in this Court.

IT FURTHER IS ORDERED that this cause be remanded to the court below from which the appeal was taken with directions to take further proceedings in conformity with the opinion of the Court herein and in accordance therewith.

STATE OF OREGON, }
County of Marion, } ss:

I, F. M. SERCOMBE, Clerk of the Supreme Court of the State of Oregon, do hereby certify that the foregoing copy of DECREE has been by me compared with the original journal entry and that it is a correct transcript therefrom, and of the whole of such original, as the same appears of record, and in my office and custody.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the said Court at Salem, Oregon, March 2, 1900.

/s/ F. M. SERCOMBE
Clerk of Supreme Court,
State of Oregon

TO THE CIRCUIT COURT OF THE STATE OF OREGON,
For the County of MULTNOMAH

You are hereby commanded that of the above judgment order of our Supreme Court you cause proper entry to be made upon the records of your court, as of a judgment therein, and proceed to final determination and execution

thereof, as to the said order of our Supreme Court, and to law and justice shall appertain.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court at Salem, Oregon, MARCH 2, 1960.

/s/ F. M. SERCOMBE

*Clerk of Supreme Court,
State of Oregon*

BE IT REMEMBERED, that at a regular term of the Supreme Court of the State of Oregon, begun and held at the court room in the city of Salem on the first Monday, the 5th day of October, 1959. WHEREUPON on this Wednesday, the 13th day of January, 1960, the same being the 28th judicial day of said term, there were present:

Wm. M. McAllister, Chief Justice,
George Rossman, Associate Justice,
Hall S. Lusk, Associate Justice,
Harold J. Warner, Associate Justice,
William C. Perry, Associate Justice,
Gordon W. Sloan, Associate Justice,
Kenneth J. O'Connell, Associate Justice,
F. M. Sercombe, Clerk,

when the following proceedings were had:

Appeal from Multnomah County

**In the Matter of the Estate of,
Muharem Zekich, deceased.**

**STATE OF OREGON, acting by and through the State Land
Board, Appellant**

v.

**LUTVO ZEKIC, IBRO ZEKIC, HABIBA TURKOVIC, DZEDJA POPO-
VAC, SEFKO MURADBASIC, DIKA MURADBASIC, MURTA
BRKIC, MILKA ZEKIC, JASMINA ZEKIC and RAJKA ZEKIC,
and BRANKO KARDZOLE, Consul General of Yugoslavia
at San Francisco, California, Respondents**

This cause on December 16, 1959, having been duly argued and submitted upon and concerning all questions arising upon the transcript and record and then reserved for further consideration, and the Court having fully considered all said questions as well as suggestions of counsel in their argument and briefs finds there is error as alleged.

IT THEREFORE IS CONSIDERED, ORDERED and DECREED that the decree of the court below rendered and entered in this cause be and the same is in all things reversed and set aside.

IT FURTHER IS ORDERED that each party pay his own costs in this Court.

IT FURTHER IS ORDERED that this cause be remanded to the court below from which the appeal was taken with directions to take further proceedings in conformity with the opinion of the Court herein and in accordance therewith.

STATE OF OREGON, }
County of Marion, } ss:

I, F. M. SERCOMBE, Clerk of the Supreme Court of the State of Oregon, do hereby certify that the foregoing copy of DECREE has been by me compared with the original journal entry and that it is a correct transcript therefrom, and

of the whole of such original, as the same appears of record, and in my office and custody.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the said Court at Salem, Oregon, March 2, 1960.

/s/ F. M. SERCOMBE

*Clerk of Supreme Court,
State of Oregon*

TO THE CIRCUIT COURT OF THE STATE OF OREGON,
~~For~~ the County of MULTNOMAH

You are hereby commanded that of the above judgment order of our Supreme Court you cause proper entry to be made upon the records of your court, as of a judgment therein, and proceed to final determination and execution thereof, as to the said order of our Supreme Court, and to law and justice shall appertain.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court at Salem, Oregon, March 2, 1960.

/s/ F. M. SERCOMBE

*Clerk of Supreme Court,
State of Oregon*

APPENDIX C

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

No. 71 287

IN THE MATTER OF THE ESTATE OF

JOE STOICH, DECEASED

**Order Denying Petition for Escheat and Determining
Distribution**

This matter having come on regularly to be heard upon the Petition of the State of Oregon for Finding and Order of Escheat and upon Answer of Heirs to Petition of the State of Oregon for Finding and Order of Escheat on file herein, the Honorable James W. Crawford, Circuit Judge, presiding, this case, the estates of Muharent Zekich, deceased, No. 71 702, and Marion Beroshi, deceased, No. 71 316 of this Court, having been consolidated for hearing by stipulation of the parties because of the similarity of facts and the identity of the issues to be decided, the State of Oregon appearing by the Attorney General of Oregon by Catherine Zorn, Assistant Attorney General, the claimant heirs hereinafter named appearing through Branko Karadzole, Consul General of Yugoslavia at San Francisco, California, by Sinisa Kosutic, Consul of Yugoslavia, and Sava Temer, Consul of Yugoslavia, and by Peter A. Schwabe, their attorney, the Court having heard, received and considered the evidence submitted and having heard the arguments of counsel and the Court finding:

1. That the next of kin and heirs at law of the said Joe Stoich, deceased, hereinafter named were all at the time of his death in Portland, Oregon, on December 6, 1953, residents and nationals of the Federal People's Republic of Yugoslavia.

2. That as of the date and time of death of Joe Stoich, deceased, on December 6, 1953, there existed and now

exist in Yugoslavia reciprocal rights upon the part of citizens of the United States to take real and personal property and the proceeds thereof by will or intestacy on the same terms and conditions as inhabitants and citizens of the country of Yugoslavia; that there then existed and now exist the rights of citizens of the United States to receive payment to them within the United States or its territories of moneys originating from the estates of persons dying within the country of Yugoslavia; and further that in the country of Yugoslavia, heirs, distributees, devisees or legatees may receive the benefit, use or control of money or property from the estates of persons dying within the State of Oregon without confiscation, in whole or in part, by the government of said country of Yugoslavia; that therefore the requirements of Section 111.070 ORS have been fully met and the relatives, heirs and distributees above named are entitled to take and to receive distribution of their inheritances from the estate of Joe Stoich, deceased.

3. That the next of kin and heirs at law of the said Joe Stoich, deceased, and the shares in which they are entitled to inherit and receive distribution of the clear proceeds of his estate are as follows:

Andja Kolovrat	sister	1/5
Drago Stojic	nephew	1/15
Dragica Sunjic	niece	1/15
Neda Turk	niece	1/15

(The children and all of the issue of a predeceased brother Mijo Stojic).

Josip Buljan	nephew	1/5
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(Only son and issue of a predeceased sister Joka Buljan, nee Stojic).

Jure Zivanovic	nephew	1/5
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(Only son and issue of a predeceased sister Mitija Zivanovic, nee Stojic).

Mara Tolie
Milan Stojic

niece
nephew

1/10
1/10

(The children and all of the issue of a
predeceased brother Ivan Stojic).

residing at Prolozac, District of Imotski;
Republic of Croatia, Yugoslavia.

NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND
DECREED:

1. That the Petition of the State of Oregon for Finding
and Order of Escheat filed herein by the State of Oregon,
acting by and through the State Land Board, be and the
same is hereby denied and dismissed.

2. That the next of kin and heirs at law of the said
Joe Stoich are the sister, nieces and nephews hereinabove
named, and that they are entitled to distribution of the
clear distributable proceeds of this estate in the portions
and fractions hereinabove set forth.

3. That upon the completion of the administration of this
estate and the final settlement thereof distribution be
made to and among the said next of kin and heirs at law
of Joe Stoich, deceased, as hereinabove set forth.

Dated at Portland, Oregon, this 26th day of April, 1957.

/s/ JAMES W. CRAWFORD
Circuit Judge

Approved as to form:

/s/ CATHERINE ZORN
Assistant Attorney General
of Oregon

This day continued in Probate Court Journal number
Seven hundred and Eighty Nine. (789)

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

No. 71 702

In the Matter of the Estate of

MUHAREM ZEKICH, Deceased

**Order Denying Petition for Escheat and Determining
Distribution**

This matter having come on regularly to be heard upon the Petition of the State of Oregon for Finding and Order of Escheat and upon Answer of Heirs, to Petition of the State of Oregon for Finding and Order of Escheat on file herein, the Honorable James W. Crawford, Circuit Judge, presiding, this case, the estates of Joe Stoich, deceased, No. 71 287 and Marion Berosh, deceased, No. 71 316 of this Court, having been consolidated for hearing by stipulation of the parties because of the similarity of facts and identity of the issues to be decided, the State of Oregon appearing by the Attorney General of Oregon by Catherine Zorn, Assistant Attorney General, the claimant heirs hereinafter named appearing through Branko Karadzole, Consul General of Yugoslavia at San Francisco, California, by Sinisa Kosutic, Consul of Yugoslavia, and Sava Temer, Consul of Yugoslavia, and by Peter A. Schwabe; their attorney, the Court having heard, received and considered the evidence submitted and having heard the arguments of counsel and the Court finding:

1. That the next of kin and heirs at law of the said Muharem Zekich, deceased, hereinafter named were all at the time of his death in Portland, Oregon, on December 17, 1953, residents and nationals of the Federal People's Republic of Yugoslavia.

2. That as of the date and time of death of said Muharem Zekich, deceased, on December 17, 1953, there existed and now exist in Yugoslavia reciprocal rights upon the part

of citizens of the United States to take real and personal property and the proceeds thereof by will or intestacy on the same terms and conditions as inhabitants and citizens of the country of Yugoslavia; that there then existed and now exist the rights of citizens of the United States to receive payment to them within the United States or its territories of moneys originating from the estates of persons dying within the country of Yugoslavia; and further that in the country of Yugoslavia, heirs, distributees, devisees or legatees may receive the benefit, use or control of money or property from the estates of persons dying within the State of Oregon without confiscation, in whole or in part, by the government of said country of Yugoslavia; that therefore the requirements of Section 111.070 ORS have been fully met and the relatives, heirs and distributees above named are entitled to take and to receive distribution of their inheritances from the estate of Muharem Zekich, deceased.

3. That the next of kin and heirs at law of the said Muharem Zekich, deceased, and the shares in which they are entitled to inherit and receive distribution of the clear proceeds of his estate are as follows:

Lutvo Zekic	brother	1/7
Ibro Zekic	brother	1/7
Habiba Turkovic	sister	1/7
Dzedja Popovac	sister	1/7
Sefko Muradbasic	nephew	1/14
Dika Muradbasic	niece	1/14

(Children and all the issue of Djuka Muradbasic, a predeceased sister)

Murta Brkic	niece	1/7
-------------	-------	-----

(Child and all the issue of Nadjla Mehmedbasic, a predeceased sister)

Milka Zekic	niece	1/21
Jasmina Zekic	niece	1/21
Rajka Zekic	niece	1/21

(Children and all the issue of Safet Zekic,
a predeceased brother)

residing at Stolac, Republic of Bosnia
and Hercegovina, Yugoslavia

NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND
DECREED:

1. That the Petition of the State of Oregon for Finding
and Order of Escheat filed herein by the State of Oregon,
acting by and through the State Land Board, be and the
same is hereby denied and dismissed.

2. That the next of kin and heirs at law of the said
Muharem Zekich are the brothers, sisters, nieces and
nephews hereinabove named, and that they are entitled to
distribution of the clear distributable proceeds of this
estate in the portions and fractions hereinabove set forth.

3. That upon the completion of the administration of this
estate and the final settlement thereof distribution be made
to and among the said next of kin and heirs at law of
Muharem Zekich, deceased, as hereinabove set forth.

Dated at Portland, Oregon, this 26 day of April, 1957.

/s/ JAMES W. CRAWFORD
Circuit Judge

Approved as to form:

/s/ CATHERINE ZORN
Assistant Attorney General
of Oregon

APPENDIX D CONVENTION

BETWEEN

THE UNITED STATES OF AMERICA AND SERBIA,
FOR FACILITATING AND DEVELOPING COMMERCIAL RELATIONS.

By the President of the United States of America.

A PROCLAMATION.

Whereas, a Treaty between the United States of America and His Highness the Prince of Serbia, for facilitating and developing the commercial relations established between the two countries, was concluded and signed at Belgrade by their respective plenipotentiaries on the 2/14 day of October, 1881, the original of which treaty, being in the English and Serbian languages, is word for word as follows:

TREATY OF COMMERCE BETWEEN THE UNITED STATES OF AMERICA AND SERBIA.

The United States of America and His Highness the Prince of Serbia, animated by the desire of facilitating and developing the commercial relations established between the two countries, have determined with this object to conclude a treaty, and have named . . . their respective plenipotentiaries . . .

Who . . . have agreed upon and concluded the following articles:

ARTICLE II.

In all that concerns the right of acquiring, possessing or disposing of every kind of property, real or personal, citizens of the United States in Serbia and Serbian subjects

in the United States, shall enjoy the rights which the respective laws grant or shall grant in each of these states to the subjects of the most favored nation.

Within these limits, and under the same conditions as the subjects of the most favored nation, they shall be at liberty to acquire and dispose of such property, whether by purchase, sale, donation, exchange, marriage contract, testament, inheritance, or in any other manner whatever, without being subject to any taxes, imposts or charges whatever, other or higher than those which are or shall be levied on natives or on the subjects of the most favored state.

They shall likewise be at liberty to export freely the proceeds of the sale of their property, and their goods in general, without being subjected to pay any other or higher duties than those payable under similar circumstances by natives or by the subjects of the most favored state.

ARTICLE III.

Merchants, manufacturers, and trades people in general of one of the two contracting countries traveling in the other, or sending thither their clerks and agents—whether with or without samples—in the exclusive interest of the commerce or industry that they carry on, and for the purpose of making purchases or sales or receiving commissions, shall be treated with regard to their licenses, as the merchants, manufacturers and trades people of the most favored nation. * * *

ARTICLE IV.

Citizens of the United States in Serbia and Serbian subjects in the United States shall be reciprocally exempted from all personal service, whether in the army by land or by sea; whether in the national guard or militia; from billeting; from all contributions, whether pecuniary or in kind, destined as a compensation for personal service; from all forced loans, and from all military exactions or

requisitions. The liabilities, however, arising out of the possession of real property and for military loans and requisitions to which all the natives might be called upon to contribute as proprietors of real property or as farmers, shall be excepted.

They shall be equally exempted from all obligatory official, judicial, administrative or municipal functions whatever.

They shall have reciprocally free access to the courts of justice or conforming to the laws of the country, both for the prosecution and for the defence of their rights in all the degrees of jurisdiction established by the laws. They can employ in every case advocates, lawyers and agents of all classes authorized by the law of the country, and shall enjoy in this respect, and as concerns domiciliary visits to their houses, manufactories, warehouses or shops, the same rights and advantages as are or shall be granted to the natives of the country, or to the subjects of the most favored nation. * * *

ARTICLE VII.

The products of the soil or of the industry of Serbia which shall be imported into the United States of America, and the products of the soil or of the industry of the United States which shall be imported into Serbia, and which shall be destined for consumption in the country, for warehousing, for re-exportation or for transit, shall be subjected to the same treatment, and shall not be liable to other or higher duties than the products of the most favored nation.

EUGENE SCHUYLER
CH. MIJATOVICH

And whereas the said treaty has been duly ratified on both parts, and the respective ratifications were exchanged at Belgrade on the 15th ultimo:

Now, therefore, I, Chester A. Arthur, President of the United States of America, have caused the said treaty to be made public, to the end that the same, and every clause and article thereof, may be observed and fulfilled with good faith by the United States and the citizens thereof. * * *

Done * * * this twenty-seventh day of December, in the year of our Lord one thousand eight hundred and eighty-two.

CHESTER A. ARTHUR.

By the President:

FRED'K T. FRELINGHUYSEN,
Secretary of State.

APPENDIX E

INTERNATIONAL MONETARY FUND AGREEMENT

Article IV. Par Values of Currencies

SECTION 1. *Expression of par values.* * * *SEC. 2. *Gold purchases based on par values.* * * *

SEC. 3. *Foreign exchange dealings based on parity.*—
The maximum and the minimum rates for exchange transactions between the currencies of members taking place within their territories shall not differ from parity.

- (i) in the case of spot exchange transactions, by more than one percent; and
- (ii) in the case of other exchange transactions, by a margin which exceeds the margin for spot exchange transactions by more than the Fund considers reasonable.

SEC. 4. *Obligations regarding exchange stability.*—(a)
Each member undertakes to collaborate with the Fund to promote exchange stability, to maintain orderly exchange arrangements with other members, and to avoid competitive exchange alterations.

(b) Each member undertakes, through appropriate measures consistent with this Agreement, to permit within its territories exchange transactions between its currency and the currencies of other members only within the limits prescribed under Section 3 of this Article. * * *

Article VI. Capital Transfers

SECTION 1. *Use of the Fund's resources for capital transfers.*—(a) A member may not make net use of the Fund's resources to meet a large or sustained outflow of capital, and the Fund may request a member to exercise controls to prevent such use of the resources of the Fund. If, after receiving such a request, a member fails to exercise appropriate controls, the Fund may declare the member ineligible to use the resources of the Fund.

SEC. 2. *Special provisions for capital transfers.* * * *

SEC. 3. *Controls of capital transfers.*—Members may exercise such controls as are necessary to regulate international capital movements, but no member may exercise these controls in a manner which will restrict payments for current transactions or which will unduly delay transfers of funds in settlement of commitments, except as provided in Article VII, Section 3 (b), and in Article XIV, Section 2.

Article VII. Scarce Currencies

SECTION 1. *General scarcity of currency.*—If the Fund finds that a general scarcity of a particular currency is developing, the Fund may so inform members and may issue a report setting forth the causes of the scarcity and containing recommendations designed to bring it to an end. A representative of the member whose currency is involved shall participate in the preparation of the report.

SEC. 2. *Measures to replenish the Fund's holdings of scarce currencies.* * * *

SEC. 3. *Scarcity of the Fund's holdings.*—(a) If it becomes evident to the Fund that the demand for a member's currency seriously threatens the Fund's ability to supply that currency, the Fund, whether or not it has issued a report under Section 1 of this Article, shall formally declare such currency scarce and shall thenceforth apportion its existing and accruing supply of the scarce currency with due regard to the relative needs of members, the general international economic situation, and any other pertinent considerations. The Fund shall also issue a report concerning its action.

(b) A formal declaration under (a) above shall operate as an authorization to any member, after consultation with the Fund, temporarily to impose limitations on the freedom of exchange operations in the scarce currency. Subject to the provisions of Article IV, Sections 3 and 4.

the member shall have complete jurisdiction in determining the nature of such limitations, but they shall be no more restrictive than is necessary to limit the demand for the scarce currency to the supply held by, or accruing to, the member in question; and they shall be relaxed and removed as rapidly as conditions permit.

Article VIII. General Obligations of Members

SECTION 1. Introduction.—In addition to the obligations assumed under other articles of this Agreement, each member undertakes the obligations set out in this Article.

SEC. 2. Avoidance of restrictions on current payments.—

(a) Subject to the provisions of Article VII, Section 3 (b), and Article XIV, Section 2, no member shall, without the approval of the Fund, impose restrictions on the making of payments and transfers for current international transactions.

(b) Exchange contracts which involve the currency of any member and which are contrary to the exchange control regulations of that member maintained or imposed consistently with this Agreement shall be unenforceable in the territories of any member. In addition, members may, by mutual accord, co-operate in measures for the purpose of making the exchange control regulations of either member more effective, provided that such measures and regulations are consistent with this Agreement.

Article XIV. Transitional Period

SECTION 1. Introduction.—The Fund is not intended to provide facilities for relief or reconstruction or to deal with international indebtedness arising out of the war.

SEC. 2. Exchange restrictions.—In the post-war transitional period members may, notwithstanding the provisions of any other articles of this Agreement, maintain

and adapt to changing circumstances (and, in the case of members whose territories have been occupied by the enemy, introduce where necessary) restrictions on payments and transfers for current international transactions. Members shall, however, have continuous regard in their foreign exchange policies to the purposes of the Fund; and, as soon as conditions permit, they shall take all possible measures to develop such commercial and financial arrangements with other members as will facilitate international payments and the maintenance of exchange stability. In particular, members shall withdraw restrictions maintained or imposed under this Section as soon as they are satisfied that they will be able, in the absence of such restrictions, to settle their balance of payments in a manner which will not unduly encumber their access to the resources of the Fund.

*SEC. 3. Notification to the Fund. * * **

SEC. 4. Action of the Fund relating to restrictions.—Not later than three years after the date on which the Fund begins operations and in each year thereafter, the Fund shall report on the restrictions still in force under Section 2 of this Article. Five years after the date on which the Fund begins operations, and in each year thereafter, any member still retaining any restrictions inconsistent with Article VIII, Sections 2, 3, or 4, shall consult the Fund as to their further retention. The Fund may, if it deems such action necessary in exceptional circumstances, make representations to any member that conditions are favorable for the withdrawal of any particular restriction, or for the general abandonment of restrictions, inconsistent with the provisions of any other article of this Agreement. The member shall be given a suitable time to reply to such representations. If the Fund finds that the member persists in maintaining restrictions which are inconsistent with the purposes of the Fund, the member shall be subject to Article XV, Section 2 (a).

SEC. 5. Nature of transitional period.—In its relations with members, the Fund shall recognize that the post-

war transitional period will be one of change and adjustment and in making decisions on requests occasioned thereby which are presented by any member it shall give the member the benefit of any reasonable doubt.

Article XV. Withdrawal from Membership

SECTION 1. *Right of members to withdraw.* * * *

SEC. 2. *Compulsory withdrawal.*— (a) If a member fails to fulfill any of its obligations under this Agreement, the Fund may declare the member ineligible to use the resources of the Fund. * * *

(b) If, after the expiration of a reasonable period the member persists in its failure to fulfill any of its obligations under this Agreement, or a difference between a member and the Fund under Article IV, Section 6, continues, that member may be required to withdraw from membership in the Fund by a decision of the Board of Governors carried by a majority of the governors representing a majority of the total voting power.

Article XIX. Explanation of Terms

In interpreting the provisions of this Agreement the Fund and its members shall be guided by the following:

(i) Payments for current transactions means payments which are not for the purpose of transferring capital, and includes, without limitation:

- (1) All payments due in connection with foreign trade, other current business, including services, and normal short-term banking and credit facilities;
- (2) Payments due as interest on loans and as net income from other investments;
- (3) Payments of moderate amount for amortization of loans or for depreciation of direct investments;
- (4) Moderate remittances for family living expenses.

The Fund may, after consultation with the members concerned, determine whether certain specific transactions are to be considered current transactions or capital transactions.

APPENDIX F**Oregon Revised Statutes
Section 111.070**

(1) The right of an alien not residing within the United States or its territories to take either real or personal property or the proceeds thereof in this state by succession or testamentary disposition, upon the same terms and conditions as inhabitants and citizens of the United States, is dependent in each case:

(a) Upon the existence of a reciprocal right upon the part of citizens of the United States to take real and personal property and the proceeds thereof upon the same terms and conditions as inhabitants and citizens of the country of which such alien is an inhabitant or citizen;

(b) Upon the rights of citizens of the United States to receive by payment to them within the United States or its territories money originating from the estates of persons dying within such foreign country; and

(c) Upon proof that such foreign heirs, distributees, devisees or legatees may receive the benefit, use or control of money or property from estates of persons dying in this state without confiscation, in whole or in part, by the governments of such foreign countries.

(2) The burden is upon such nonresident alien to establish the fact of existence of the reciprocal rights set forth in subsection (1) of this section.

(3) If such reciprocal rights are not found to exist and if no heir, devisee or legatee other than such alien is found eligible to take such property, the property shall be disposed of as escheated property.

APPENDIX G

The Secretary of State presents his compliments to the Charge d'Affaires ad interim of the Federal People's Republic of Yugoslavia and acknowledges the receipt of the Embassy's note No. 4298 of April 18, 1958, regarding the interpretation of Article II of the Convention for Facilitating and Developing Commercial Relations (sometimes called the Convention of Commerce and Navigation), concluded on October 2 14, 1881 between the United States of America and Serbia, and presently in force between the United States of America and Yugoslavia. (22 Statutes at Large 963, Treaty Series 319.)

According to the Embassy's note, the Government of Yugoslavia considers that, by virtue of Article II of the 1881 Convention, citizens of the United States are entitled to most-favored nation treatment with respect to the acquisition, possession, or disposition of property in Yugoslavia whether they reside in Yugoslavia or elsewhere and, in the case of inheritance, regardless of the decedent's nationality. With particular reference to inheritance, the Embassy states that, in accordance with this construction of Article II of the 1881 Convention, United States citizens, regardless of their residence or of the decedent's nationality, are entitled to and do actually enjoy the same rights as Yugoslav nationals with respect to the inheritance of property in Yugoslavia. This, as the note points out, is in consequence of the fact that United States citizens, wherever resident, are accorded in Yugoslavia treatment no less favorable than that accorded in Yugoslavia to nationals of Poland under Article 23 of the Treaty Regarding Legal Relations concluded on May 4, 1923 between Yugoslavia and Poland, whereby Polish nationals, irrespective of their residence, are accorded national treatment (that is, the same treatment as Yugoslav nationals) in regard to the succession to and possession of property in Yugoslavia.

The Embassy's note cites Article IX of the Treaty of Friendship, Commerce, and Navigation of July 27, 1853 between the United States of America and Argentina, which contains a national-treatment provision similar in substance to the provision in Article 23 of the 1923 treaty between Yugoslavia and Poland. The note indicates that, by the application of such provision together with the most favored-nation provision in Article II of the 1881 Convention, Yugoslav nationals are entitled to and should be accorded, whether they reside in the United States or elsewhere and regardless of the decedent's nationality, the right to acquire, possess, or dispose of property in the United States.

The Embassy's note further states that the Yugoslav Government, pursuant to the third paragraph of Article II of the 1881 Convention, accords to American citizens, wherever they reside, the right to withdraw and have transferred to them moneys due them by inheritance from decedents' estates located in Yugoslavia or moneys derived from the sale of inherited property in Yugoslavia.

The Embassy's note called attention to the agreement of July 19, 1948 between the United States of America and Yugoslavia regarding the settlement of pecuniary claims against Yugoslavia, and particularly to Article 5 of that agreement which has the effect of confirming that Article II of the 1881 Convention is interpreted as according rights in regard to property in one or the other of the two countries irrespective of the place of residence of the nationals concerned or of the decedent's nationality.

The Embassy's note inquired whether the United States Government concurs with the Yugoslav Government's interpretation of Article II of the 1881 Convention, particularly as applied to the rights of Yugoslav nationals who do not reside in the United States. It appears that the Embassy's inquiry is prompted by indications that some State attorneys general in the United States are tending

toward the adoption of a contrary view. The note refers to a statement by the Supreme Court of California in the case of *In re Arbulich's Estate*, 41 Cal. 2d 86, 257 P. 2d 433, certiorari denied, 346 U.S. 897 (1953).

It is well to bear in mind a general principle applied in the United States, namely, that although an expression of opinion by the Department of State with respect to the interpretation of a treaty provision will normally be given considerable weight by the courts, such an expression of opinion is not binding on the courts.

The Department of State concurs in the Yugoslav interpretation of Article II of the 1881 Convention. That is to say, it is the opinion of the Department that Article II provides that whatever right is accorded in this country to nationals of any third country, wherever resident, with respect to the acquisition, possession, or disposition of property (including the rights of inheritance and transfer of proceeds thereof), shall be accorded likewise in this country to Yugoslav nationals wherever resident and irrespective of the decedent's nationality. The Embassy's citation of the 1853 treaty between the United States of America and Argentina in connection with this matter appears to be appropriate.

Article II of the 1881 Convention is quoted in the Embassy's note, so it will not be set forth here. The critical words "citizens of the United States in Serbia and Serbian subjects in the United States shall enjoy [certain rights]" as they appear in the first paragraph of Article II may be given at least two plausible interpretations, namely: (1) The words "in Serbia" and "in the United States" may be deemed adjectival, modifying respectively "citizens of the United States" and "Serbian subjects". (2) The words "in Serbia" and "in the United States" may be deemed adverbial, modifying "shall enjoy". The first of these interpretations would limit the application of the article to the rights of nationals of the one country present

in the other. However, a literal reading of the pertinent phraseology in context does not require such a restrictive interpretation. Rather, a liberal interpretation of the ambiguous portion produces a reasonable construction consonant with the spirit of the Treaty as a whole.

Under the first, or restrictive interpretation, an American citizen residing in Yugoslavia would be accorded under the most-favored-nation provision whatever rights in respect of the acquisition, possession, or disposition of property in Yugoslavia were accorded to nationals of a third country (for example, Poland under the 1923 treaty which the note cites) who were resident therein. However, American citizens outside Yugoslavia would not be accorded rights similar to rights under Yugoslav law enjoyed by Polish nationals who were not resident therein.

A review of the negotiating history of the 1881 Convention discloses nothing which supports the theory that the Governments of the United States and Serbia intended to provide that only some and not all of the nationals of the respective countries would be entitled to most-favored-nation treatment with respect to the acquisition, possession, and disposition of property. In this connection, it appears to have been the consistent policy of the United States, as reflected in treaties concluded between 1850 and 1890, to accord rights of inheritance and succession to property to nationals of the other contracting party without regard to their residence at the time of the decedent's death.

As stated in the preamble thereto, the 1881 Convention was entered into for the purpose of "facilitating and developing the commercial relations established between the two countries". The restrictive view would probably produce results inconsistent with this purpose. For example, a national of one country, also resident therein, wishing to make an *inter vivos* disposition of property belonging to him and located in the other country would have been required to make the long and then arduous trip

to the other country to effect the disposition. It seems equally inconsistent with the expressed purpose of the Convention to make an alien's rights of inheritance turn on his location at the time of decedent's death.

Therefore, in the absence of clear and unmistakable evidence of a contrary intention on the part of the negotiators, it appears that the interpretation most consistent with the purpose of the Convention, and with the policy reflected in treaties between the United States of America and other countries, is to interpret the words "in Serbia" and "in the United States" as referring to the place where property rights are granted rather than to the geographical location of the person claiming such rights. As thus construed, the provision would accord to nationals of either party *wherever resident* rights similar to those enjoyed by nationals of the most-favored-nation *wherever resident*. A review of all relevant correspondence available at the National Archives indicates no intention contrary to this interpretation. As the Supreme Court has said:

"Treaties are to be construed in a broad and liberal spirit, and, when two constructions are possible, one restrictive of rights that may be claimed under it and the other favorable to them, the latter is to be preferred. *Hauenstein v. Lynham*, 100 U.S. 483, 487; *Geofroy v. Riggs*, *supra*, 271; *Tucker v. Alexandroff*, 183 U.S. 424, 437." *Asakura v. Seattle*, 265 U.S. 332, 342 (1924).

This note, of course, is not to be considered as having the character of an international agreement or as effecting any modification of the treaty.

Department of State,

Washington, April 24, 1958.

211.683 4-1858

No. 4298

The Ambassador of the Federal People's Republic of Yugoslavia presents his compliments to the Honorable the Secretary of State and, in accordance with talks held between representatives of the Yugoslav Embassy and representatives of the Department of State, has the honor to inform the Honorable the Secretary of State that in the United States there have in the post-war period been various interpretations of Article II of the "Convention for Facilitating and Developing Commercial Relations" concluded between Serbia and the United States on October 2/14, 1881, (also commonly called the Convention of Commerce and Navigation of 1881, Treaty Series 319, 22 Stat. 936, 2 Malloy's Treaties, ect. [sic] 1613). The governments of the Federal People's Republic of Yugoslavia and of the United States of America recognize that this Convention has at all times been and is now in force between Yugoslavia and the United States. Article II of the Convention reads in the English text as follows:

"In all that concerns the right of acquiring, or possessing or disposing of every kind of property, real or personal, citizens of the United States in Serbia and Serbian Subjects in the United States, shall enjoy the rights which the respective laws grant or shall grant in each of these states to the subjects of the most favoured nation."

"Within these limits, and under the same conditions as the subjects of the most favoured nation, they shall be at liberty to acquire and dispose of such property, whether by purchase, sale, donation, exchange, marriage, contract, testament, inheritance, or in any other manner whatever, without being subject to any taxes, imposts or charges whatever, other or higher than those which are or shall be levied on natives or on the subjects of the most favoured nation."

"They shall likewise be at liberty to export freely the proceeds of the sale of their property and their goods in general, without being subjected to pay any

other or higher duties than those payable under similar circumstances by natives or by the subjects of the most favoured state."

In the period since 1945 there have been cases in which Article II of the Convention of Commerce and Navigation of 1881, when applied in the United States, was interpreted as if it did not sufficiently bear out reciprocal rights of inheritance between the citizens of the Federal People's Republic of Yugoslavia and the citizens of the United States of America. According to the interpretations (particularly a statement by the Supreme Court of California in the case *In re Arbulich Estate*, 41 Cal. 2d 86, 257 P. 2d 433 and statements of some State attorneys general), the provisions of the Convention allegedly cannot be applied to those decedents' estates, the decedent of which is an American citizen who has left property in the United States to a Yugoslav citizen residing in Yugoslavia. According to such an interpretation, the acquisition of property by inheritance, pursuant to the provision of the most-favoured-nation clause in Article II of the Convention, encompasses only those citizens of Yugoslavia actually and physically living, sojourning or residing within the borders of the United States regardless of the decedent's citizenship. On the other hand, according to such an interpretation, the Yugoslav citizens permanently residing within the borders of Yugoslavia cannot inherit property left them by a resident of the United States, although the heirs are in most cases the closest relatives of the decedent's—his parents, spouse, children, brothers, sisters, etc. And vice versa, the corresponding should, then, apply as regards the inheritance rights of American citizens in Yugoslavia.

Such an interpretation, however, is directly contrary to the past and present interpretation of the Yugoslav courts and authorities, who always have been applying the provisions of Article II of the Convention so that by

virtue thereof the American citizens are entitled to acquire property by inheritance, testamentary disposition or intestate succession, or by transfer, regardless of whether they are permanently residing in the United States of America, or anywhere else, as well as regardless of whether the decedent is a citizen of Yugoslavia, the United States or any third country. This can be clearly deduced from many a decision of the Yugoslav courts, who have been applying and interpreting Article II of the Convention exclusively in the above sense.

In Article 23 of the Convention of Legal Relations between Yugoslavia and Poland, concluded on May 4, 1923, (85 League of Nations Treaty Series 455) the two contracting parties extended rights of inheritance to the nationals of the other as follows:

“The nationals of either Contracting Party shall be allowed, on the same conditions as nationals of the country to succeed or to take possession of property passing to them in the territory of the other Contracting Party by operation of law or in virtue of testamentary disposition.”

It is the construction of the Yugoslav Government, that under the most-favoured-nation clause of Article II of the Convention of 1881 citizens of the United States regardless of their whereabouts or residence have had extended to them and are entitled to enjoy the same rights of inheritance from decedents' estates and of property located in Yugoslavia as nationals of Yugoslavia themselves, and regardless of whether the decedent was a citizen of Yugoslavia, the United States of America or any third country.

As regards the application of the most-favoured-nation clause to the rights of the Yugoslav citizens, regardless of their permanent residence, to acquire property and to inherit estates in the United States, it is clearly explained, for example, by Article IX of the Treaty of Friendship, Commerce and Navigation between the United States and

Argentina, signed at San Jose on July 27, 1853 (10 Stat. Pt. 2, Public Treaties/ 16 Treaty Series 4, 1 Treaties Malloy/ 20):

"In whatever relates to the police of the ports, the lading and unlading of ships, the safety of the merchandise, goods and effects, and to the acquiring and disposing of property of every sort and denomination, either by sale, donation, exchange, testament or in any other manner whatsoever, as also to the administration of justice, the citizens of the two contracting parties shall reciprocally enjoy the same privileges, liberties and rights, as native citizens: and they shall not be charged, in any of those respects, with any higher imposts or duties than those which are paid or may be paid, by native citizens, submitting, of course, to the local laws and regulations of each country respectively. If any citizen of either of the two contracting parties shall die without will or testament, in any of the territories of the other, the Consul-General or Consul of the nation to which the deceased belonged, or the representative of such Consul-General or Consul, in the absence, shall have the right to intervene in the possession, administration and judicial liquidation of the estate of the deceased, conformably with the laws of the country, for the benefit of the creditors and legal heirs."

This treaty unequivocally grants Argentine citizens the same rights of inheritance as native citizens in the United States, in the same manner as the right is granted to the Yugoslav citizens by the treaty between Poland and Yugoslavia. It will be observed that in substance the 1853 treaty with Argentina is very similar to the 1923 treaty between Poland and Yugoslavia.

It is further the construction of the Yugoslav Government that by virtue of the most-favoured-nation clause and the third [sic] subparagraph of Article II of the Convention of 1881, American citizens, wherever they may physically be or permanently reside, have and must be accorded the right to withdraw and export, i.e. have transferred to them

upon request to the United States or wherever they may direct, moneys due them by inheritance from decedents' estates located in Yugoslavia or moneys derived from the sale of inherited property in Yugoslavia.

The interpretation of the Yugoslav Government is also based on the spirit and intentions stated in the preamble to the Convention of Commerce and Navigation of 1881, as well as on the basis of the needs resulting from the relations which prevailed at that time between the two countries.

It is apparent, therefore, that the construction of the treaty adopted by the Supreme Court of California in *Re Arbulich Estate* is not in accord with the understanding of the Yugoslav Government concerning the meaning and the effect of Article II of the Convention of 1881. This construction requires that there be twice read into the language the word "residing" or at least the word "sojourning" so the clause could read "citizens of the United States residing (or sojourning) in Serbia and Serbian citizens residing (or sojourning) in the United States". It requires no addition of words in the treaty to rephrase from Victorian into modern English what was beyond doubt the intention of the treaty-makers as to the persons to be covered by the treaty.

Article 5 of the "Agreement Between the Government of the United States of America and the Federal People's Republic of Yugoslavia Regarding Pecuniary Claims of the United States and its Citizens", concluded on July 12, 1948, (Treaty Series No. 1803, 62 Stat. 2133) provides as follows:

"The Government of Yugoslavia agrees to accord to nationals of the United States lawfully continuing to hold, or hereafter acquiring assets in Yugoslavia, the right and privileges of using and administering such assets and the income therefrom within the framework of the controls and regulations of the Government of Yugoslavia, on conditions not less favourable than the rights and privileges accorded to nationals

of Yugoslavia or of any other country, in accordance with the Convention of Commerce and Navigation between the United States of America and the Prince of Serbia, signed at Belgrade, October 2/14, 1881."

It is evident that both Parties have confirmed thereby that Article II of the Convention of 1881 is to be interpreted to the effect that the citizens of one contracting party shall have the most-favoured-nation treatment when acquiring property in the territory of the other, regardless of the heir's residence or the decedent's citizenship. This joint interpretation (reached by both contracting parties) confirms the already reached concurrence on the existence of the rights of American citizens in Yugoslavia (and accordingly of the Yugoslav citizens in the United States of America) to acquire property (and accordingly to inherit) by virtue of Article II of the Convention of 1881, regardless of the heir's residence and the decedent's citizenship.

The Commission for Interpreting of Laws of the National Assembly of the Federal People's Republic of Yugoslavia issued on August 3, 1955, and the National Assembly subsequently confirmed, a binding interpretation, as follows:

"According to Article 5 of the Agreement between the Government of the United States of America and the Federal People's Republic of Yugoslavia regarding Pecuniary Claims of the United States of America and its Citizens, concluded on July 19, 1948, and the provisions of Article II of the Convention of Commerce and Navigation between Serbia and the United States of America, concluded on October 2/14, 1881, which is still in force, citizens of the United States of America are equal with citizens of the Federal People's Republic of Yugoslavia in regard to the manner and object of acquiring and disposing of both personal and real property. Accordingly, they have the right to inherit real property in the territory of the Federal People's Republic of Yugoslavia under the same conditions as citizens of the Federal People's Republic of Yugoslavia on the basis of the Law, as

well as on the basis of a Testament, regardless of the provision of Article 5, paragraph 1 of the Decree regarding the Control of Transfers of Real Property, of March 20, 1948."

In the note of the Secretariat of State for Foreign Affairs of Yugoslavia No. 515370/53 of October 21, 1953, to the American Embassy in Belgrade, in response to the American Embassy's note No. 1368 of May 21, 1953, unqualified assurances were given by the Yugoslav Government that it considers citizens of the United States, regardless of their whereabouts or residence, to have full reciprocal rights of inheritance in decedents' estates located in Yugoslavia on the basis of Article II of the Convention between Serbia and the United States of 1881, as confirmed by Article 5 of the Agreement on Pecuniary Claims of the United States and its Citizens, concluded on July 19, 1948.

The Attorneys General of both Oregon and California, which enacted the so-called reciprocal inheritance rights statutes in the years 1937 and 1941 respectively, issued opinions that reciprocal inheritance rights existed between Yugoslavia and the United States in the manner required by their statutes by virtue of Article II of the Convention between Serbia and the United States of 1881. The opinion of the Honorable I. H. Van Winkle, Attorney General of Oregon, is in the 1938-1940 volume of the Opinions of the Attorneys General at page 136, that of the Honorable Earl Warren, Attorney General of California, is No. 1 NS 4451 dated July 15, 1942, from which the following is quoted:

"Class 2. Where the same or reciprocal rights in the matter of acquiring and holding all kinds of property in any manner whatsoever are not granted to the citizens of the respective parties to the treaty in those specific words, but are in effect so granted by conferring such rights upon those citizens which the respective laws grant or shall grant in each of the states to the subjects of the most-favoured-nation, and under the same conditions as the subjects of the most-favoured-nation."

"In the class is Yugoslavia (the Treaty applying also to Serbia and the Kingdom of the Serbs, Croats and Slovenes) the citizens of which are entitled, by virtue of the reference provisions of such Treaty, to the same rights as those enjoyed by the citizens of Argentina."

In substantiation of the fact that Yugoslavia has always meticulously performed and carried out the obligations which, under its construction of the Convention, are due American citizens heirs or beneficiaries of estates and property in Yugoslavia, reference may be made to the Department's note of December 26, 1957, in response to this Embassy's note of November 4, 1957, No. 4693, wherein the Department stated:

"In the light of the foregoing, the Embassy is informed that the Department has not been apprised of any instance where an American citizen has not been permitted to inherit or succeed by will or otherwise to property from an estate in Yugoslavia, or, after having duly made application therefor, has not been granted permission to transfer his inheritance of the proceeds of sale thereof to the United States in dollars."

In view of the foregoing, the Government of the Federal People's Republic of Yugoslavia would appreciate being advised of the opinion of the Government of the United States on the following:

Whether it concurs with the construction of the Yugoslav Government that it was the treaty-making intention of both contracting parties in negotiating and concluding Article II of the Convention for Facilitating and Developing Commercial Relations of 1881 and Article 5 of the Agreement between the Government of the United States of America and the Federal People's Republic of Yugoslavia regarding Pecuniary Claims of the United States and its Citizens of 1948 to safeguard the inheritance rights of American citizens and to ensure the transfer of the

proceeds accruing thereof, regardless of their permanent residence, encompassing therefore also those American citizens residing in the United States, and reversely, whether it concurs with the construction of the Yugoslav Government that it was the treaty-making intention of both contracting parties in negotiating and concluding Article II of the Convention of 1881 and Article 5 of the Agreement of 1948, to safeguard the inheritance rights of Yugoslav citizens and to ensure the transfer of the proceeds accruing thereof, regardless of their permanent residence, encompassing therefore also those residing in Yugoslavia!

The Yugoslav Ambassador avails himself of this opportunity to renew to the Honorable the Secretary of State the assurances of his highest consideration.

Washington, D. C., April 18, 1958.

APPENDIX H

CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS

STATE OF LOUISIANA

No. 366-848

DIVISION "C"

Docket 1

SUCCESSION OF STEVE VLAHO**Reasons for Judgment**

The two primary issues here are: (1) Whether testator was compos mentis when he wrote his last will and testament in the olographic form; and, (2) Whether reciprocal rights of inheritance exist in Yugoslavia and America, which permit the citizens of the one to inherit property in the other.

Plaintiff, a citizen of Louisiana and a collateral relative of testator, would inherit in the event of intestacy and want of reciprocity. Intervenor's are the testamentary heirs; are citizens of Yugoslavia, and are brothers and sisters of testator.

Regarding testamentary capacity, plaintiff's witnesses devoted their testimony to happenings in 1936, twenty-one years before testator made his last will. While testator was committed to the East Louisiana Mental Hospital in 1936, he was never confined there. Plaintiff himself testified that, from 1936 to his death, testator was employed in New Orleans, and always knew his whereabouts and acquaintances.

Stock brokers, who saw him almost daily, testified that testator at all times knew his friends; his affairs; was well acquainted with the operation of the stock market; was in full possession of his faculties to the date of his death; and often consulted them about stock purchases.

By self-denial and sacrifice, testator had for years worked, saved, invested and managed his estate until it reached over \$60,000.00; which was accumulated in small

amounts, methodically and carefully; all despite his foreign birth and limited education.

Testamentary capacity is always presumed. Succession of Mithoff, 168 La. 624, 122 So. 886. Every person is presumed to be of sound mind and such presumption continues until overcome by convincing evidence, likened to that required in criminal cases to overcome the presumption of innocence. Succession of Mithoff, *supra*. Anyone attacking a will must show the testator's lack of capacity *when the will was executed*. Succession of Heinemann, 136 So. 51, 172 La. 1057 (1931); Succession of Brugier, 83 So. 366, 146 La. 29 (1919).

While testator was committed in 1936, he neither entered a hospital nor was interdicted. Commitment to an insane asylum produces none of the effects of a formal interdiction; it is a mere matter of police regulation. Succession of Connor, 165 La. 890, 116 So. 223 (1928) (where a valid will was executed in the asylum).

Plaintiff lays stress on the fact that testator erroneously designated the relationship of some of his legatees. In *Wileox vs. City of Hammond*, 163 La. 489, 112 So. 373 (1927), the Supreme Court rejected a similar argument that the testatrix's failure to provide for a person in whom she had shown affection showed evidence of incapacity. Therefore, the plea of non compos mentis is not sustained and is rejected.

Regarding the issue of Reciprocity, testator left his estate to his brothers and sisters, his legal heirs. In the Succession of Herdman, 154 La. 477, 97 So. 664, Herdman left his estate to his wife and children, in Odessa, Russia. The State attacked the legacies, contending there was no treaty between the United States and Russia that would entitle citizens or residents of Russia to inherit property in Louisiana * * * [sic], and that since 1911, citizens of Russia could not inherit from residents of the United States or Louisiana; and urged the application of Article 1490, La.

Revised Civil Code, which reads: "Donations inter vivos and mortis causa may be made in favor of a *stranger* when the laws of his country do not prohibit similar dispositions from being made in favor of a citizen of this state."

Our Supreme Court held that Article 1490 had no application to that case because forced or legal heirs cannot be "*strangers*", either in fact or in law.

Accordingly, the codal article invoked by plaintiff here can have no application, since the legatees are testator's legal heirs, not "*strangers*."

Plaintiff relies on the decision of the California courts, "In Re Arbulich Estate", 257 Pac. (2d) 433, holding there was no reciprocity between Yugoslavia and America.

The California statute declares that the burden shall be upon such non-resident aliens to establish the existence of reciprocal rights, while our Civil Code has no such provision. The Arbulich case held that the foreign heirs had not sustained the burden of proving reciprocity and, because of a lack of proof, a divided court held against the foreign heirs.

Dr. Milan Bulajic, a graduate of the University of Belgrade, with the degree of Doctor of Laws, and the accredited diplomatic representative of Yugoslavia to the United States, testified for intervenors. His testimony establishes the following:

California courts no longer follow the Arbulich decision, and on many occasions since have ordered the distribution of California estates to heirs residing in Yugoslavia.

The Superior Court, Los Angeles, California, In the Matter of the Estate of Mitchell Miloglav, No. 301-394, reviewed the Arbulich decision, refused to follow it and commented as follows:

"In the case before this Court evidence has been introduced in an effort to prove that whatever was

established in the Arbulich case, the Yugoslav Foreign Exchange Law does not, either in fact or in effect, modify the reciprocity of inheritance which, it is conceded, otherwise exists. After carefully considering the evidence produced and the arguments presented, this Court concurs with this position.

"The attorney for the administrator will prepare findings and order approving first and final account and for distribution as prayed, finding that reciprocity exists with Yugoslavia."

In the Matter of the Estate of Victor Jursee, 132-542, Superior Court, San Francisco, California, refused to follow the Arbulich decision, with reasons as follows:

"That the reciprocity required by Section 259 of the Probate Code of the State of California exists as to the Federal People's Republic of Yugoslavia and did exist on August 13, 1954, the date upon which said deceased, Victor Jursee, died; and,

"By virtue of the decision and foreign exchange law of Yugoslavia citizens of the United States of America had on the said date of death of said deceased and continue to have an enforceable right to procure the transmittal from Yugoslavia to the United States of America of funds devolving from their inheritance from decedent's estates in Yugoslavia."

In the Matter of the Estate of Steve Gerovich, Deceased, No. 47073, the Superior Court, San Francisco, California, held that reciprocity did, in fact, exist between Yugoslavia and the United States as is set forth in the Jursee case quoted above.

Recently, the Supreme Court of Montana passed upon the same question posed in the Arbulich case. In Re Spoya's Estate, 282 Pac. 2(d) 452, it held that reciprocity did exist in fact and in law between Yugoslavia and the United States,

"There was ample evidence, without the exhibits complained of, to prove reciprocity and were we to say that

some of such exhibits were inadmissible, still we would have to say, that the rulings were harmless and reciprocity was amply proven to make out a prima facie case to sustain such rulings; there was no evidence to the contrary."

The Supreme Court of Montana in the case of *In Re Ginn's Estate*, 347 Pac. 2(d) 467 (decided November 27, 1959), rehearing denied December 29, 1959), again held that reciprocity both in fact and in law did exist between Yugoslavia and the United States, as follows:

"An examination of the record and exhibits in this cause, together with the opinion of this Court *In Re Spoya's Estate*, 129 Montana 83, 282 Pac. 2(d) 452, convinces us that the petitioner established proof of reciprocity, as required by our law, by substantial, credible and sufficient evidence."

Both Montana decisions are important because the Montana statute is similar to the California statute, in that the burden is upon the foreign heirs to establish factually that reciprocity exists between Yugoslavia and the United States. With the burden shifted to the foreign heirs, the Supreme Court of Montana decided that they had, in fact, successfully carried the burden of proof. The Louisiana Code (Article 1490) requires proof of the lack of reciprocity, rather than proof of the existence of reciprocity, which, under Louisiana law, is presumed until proved to the contrary.

From the testimony of Dr. Bulajic, the diplomatic notes passing between the State Departments of the United States and Yugoslavia, and the recent California and Montana decisions, the following conclusions are inescapable:

(1) That reciprocity, in law and in fact, existed as of the date of the death of testator and as of the present date—between the United States and Yugoslavia—by virtue of the Convention between the United States of America

and Serbia for Facilitating and Developing Commercial Relations of 1881.

(2) That the Treaty of 1881 (Article II) should be interpreted to include the nationals of both countries wherever they reside, i.e., in the United States or Yugoslavia and hence by the very Treaty in effect between the parties, reciprocity does in fact exist in favor of United States nationals residing in Yugoslavia as well as Yugoslav nationals residing in the United States.

(3) The binding interpretation of Article II of the 1881 Treaty issued by the People's Assembly of Yugoslavia (the Supreme Legislative Body of Yugoslavia) confirmed the interpretation that United States citizens are equal with Yugoslav citizens in regard to the manner and object of acquiring and disposing of property in Yugoslavia and further, that Yugoslav citizens may inherit real estate in Yugoslavia whether on the basis of law or by testament. Consequently, the People's Assembly of Yugoslavia has erased any doubt on the subject as to the right of a United States citizen to inherit property in Yugoslavia and dispose of it as he sees fit.

(4) That reciprocity exists in law is found in Article I of the Constitution of the Federal People's Republic of Yugoslavia (Ex. 13) which provides that the right of inheritance is regulated by law and that the inheritance of private property is guaranteed; further, the Law of Inheritance of Yugoslavia (Ex. 14) provides that rights belonging to individuals may be inherited and that inheritances are a matter of uniformity in Yugoslavia; likewise, the Law of Inheritance (Ex. 16) provides that foreign nationals have the same right to inherit in Yugoslavia as domestic citizens.

(5) Here we are not faced with conflicting evidence. The existence of treaties between Yugoslavia and America and their bilateral interpretation between the States

Departments of both countries, is clear and unequivocal. The interpretation of treaties by the respective governments is political, not judicial, and the Courts must accept them.

Accordingly, the application of plaintiff to nullify testator's last will and testament is dismissed on both counts and the intervenors are adjudged legally entitled to inherit under said last will and testament; plaintiff to pay all costs of these proceedings.

(Sgd.) L. H. YARRUT
Judge

New Orleans, Louisiana,
May 9th, 1960.

APPENDIX I

No. 2 SERBIAN CONS. SERIES.

Consulate General of the
United States for Serbia
Athens March 29, 1883.

The Honourable

A. A. Adee.

Third Assistant Secretary of State.

Sir,

I have the honour to enclose herewith a report on the foreign trade of Serbia. With the difficulties of obtaining information from merchants who are jealous of allowing their business to be known by others, and with the almost total absence of complete or accurate statistics, the preparation of this report has been a matter of some difficulty, and it is necessarily very imperfect.

I shall send you shortly a copy of the Serbian tariff.

I am, Sir,

Very respectfully,

Your obedient servant,

Eugene Schuyler

Enclosure:

Report on Serbian foreign commerce.

REPORT ON THE FOREIGN COMMERCE OF SERBIA.

Area & Population. Serbia before the Treaty of Berlin of 1878 had an area of 14,605 square miles, and a population of about 1,337,000. The new districts added by the Treaty of Berlin gave an increase of area of 4,195 square miles and about 303,000 population. The total area now is therefore 18,800 square miles, and the population at the end of 1881 was estimated at 1,760,000.

Government. The Government of the Kingdom being strictly constitutional, gives all the necessary guarantees

for the maintenance of good order and the execution of justice. There is a national legislative assembly, called the *Skuptschina*, composed of one chamber only, three fourths of the members being elected by the people, and the remaining fourth being appointed by the King. There are regular courts of justice, and the jurisprudence, both civil and criminal is based partly on Austrian and partly on French models. By commercial and consular treaties lately concluded, citizens of the United States have in Serbia all the rights and privileges enjoyed by subjects of other powers.

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Eugene Schuyler

Consulate General of the
United States for Serbia
Athens, March 29, 1883.

FILE COPY.

No. **102**

Office Supreme Court U.S.

FILED

JUL 26 1960

JAMES R. BROWNING, Clerk

In the Supreme Court of the United States

OCTOBER TERM, **1959** 1960

ANDJA KOLOVRAT, DRAGO STOJIC, DRAGICA SUNJIC,
NEDA TURK, JOSIP BULGAN, JURE ZIVANOVIC,
MARA TOLIC and MILAN STOJIC, and also BRANKO
KARADZOLE, Consul General of Yugoslavia at San Fran-
cisco, California,

Petitioners,

v.

STATE OF OREGON, acting by and through the State Land
Board,

Respondent.

LUTVO ZEKIC, IBRO ZEKIC, HABIBA TURKOVIC,
DZEDJA POPOVAC, SEFKO MURADBASIC, DIKA MU-
RADBASIC, MURTA BRKIC, MILKA ZEKIC, JASMINA
ZEKIC and RAJKA ZEKIC, and also BRANKO KARAD-
ZOLE, Consul General of Yugoslavia at San Francisco, Cali-
fornia,

Petitioners,

v.

STATE OF OREGON, acting by and through the State Land
Board,

Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

ROBERT Y. THORNTON
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Counsel for Respondent
Supreme Court Building
Salem, Oregon

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- 3 Bouvier's Law Dictionary (Rawle's Third Edition) 13
- V Hackworth, Digest of International Law, 399 15

In the Supreme Court of the United States

OCTOBER TERM, 1959

ANDJA KOLOVRAT, DRAGO STOJIC, DRAGICA SUNJIC,
NEDA TURK, JOSIP BULGAN, JURE ZIVANOVIC,
MARA TOLIC and MILAN STOJIC, and also BRANKO
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RESPONDENT'S BRIEF IN OPPOSITION TO
PETITION FOR A WRIT OF CERTIORARI

STATEMENT OF THE CASE

The decedents Joe Stoich and Muharem Zekich died
intestate in the State of Oregon in December 1953, leav-
ing estates consisting entirely of personal property.

These decedents were residents of Oregon and their American citizenship is not questioned. Their sole surviving relatives were residents and nationals of Yugoslavia. These relatives, together with the Consul General of Yugoslavia at San Francisco, their attorney in fact, are the petitioners here. There being no other relatives of the decedents legally qualified to inherit, the State of Oregon filed petitions in the Circuit Court of the State of Oregon for Multnomah County for the escheat of the estates of the decedents under the provisions of ORS 111.070. App. A, p. 21, infra. The petitions for escheat were opposed by answer of the petitioners here. Because the basic facts and questions were substantially the same, the escheat proceedings in the two estates were consolidated for trial. The trial court found against the State of Oregon on its petitions for escheat, and the State of Oregon appealed to the Oregon Supreme Court.

Upon hearing the consolidated appeals, the Oregon Supreme Court reversed the decrees of the circuit court and held that the provisions of ORS 111.070, requiring that American citizens receive payment of their foreign inheritances by delivery within the United States, did not infringe upon the treaty between this country and Yugoslavia and that the Yugoslavian Foreign Exchange Law and Regulations denied American citizens an unqualified and enforceable right to receive delivery of their Yugoslavian inheritances. The court further held that failure to prove the legal existence of the rights required by ORS 111.070 defeated claims of succession

to the Oregon inheritances. *In re Stoich's Estate*, (1960) — Or. —, 349 P.(2d) 255, 268.

In reaching its decision, the Oregon Supreme Court gave full consideration to Article II of the Treaty of Commerce between the United States of America and Serbia concluded in October 2/14, 1881 (22 Stat. 963, Treaty Series 319), as well as the Bretton Woods International Monetary Fund Agreement (60 Stat. 1401). Both were cited in petitioners' Oregon Supreme Court brief and both were argued by petitioners' counsel in oral argument.

Notwithstanding implications in petitioners' petition for writ of certiorari, the Oregon Supreme Court in its opinion quoted in full Article II of the United States-Serbian Treaty of 1881, as follows:

"In all that concerns the right of acquiring, possessing or disposing of every kind of property, real or personal, citizens of the United States in Serbia and Serbian subjects in the United States, shall enjoy the rights which the respective laws grant or shall grant in each of these states to the subjects of the most favored nation.

"Within these limits, and under the same conditions as the subjects of the most favored nation, they shall be at liberty to acquire and dispose of such property, whether by purchase, sale, donation, exchange, marriage contract, testament, inheritance, or in any other manner whatever, without being subject to any taxes, imposts or charges whatever, other or higher than those which are or shall be levied on natives or on the subjects of the most favored state.

"They shall likewise be at liberty to export freely the proceeds of the sale of their property, and their

goods in general, without being subjected to pay any other or higher duties than those payable under similar circumstances by natives or by the subjects of the most favored state." *In re Stoich's Estate*, supra, — Or. —, 349 P. (2d) 255, 263.

In construing the treaty, the Oregon court referred to *Clark v. Allen*, 331 U.S. 503, 91 L. Ed. 1633, recognized by petitioners as "the cornerstone of the entire reciprocal inheritance rights structure" (Resp. Br., p. 16, Or. Sup. Ct.), in which the United States Supreme Court reviewed the comparable inheritance provisions of Article IV of the Treaty of Friendship, Commerce and Consular Rights between the United States and Germany of December 1923 (44 Stat. 2132). Finding the language of Article II of the Yugoslavian treaty to have the same import and meaning as that of Article IV of the German treaty construed in *Clark v. Allen*, the Oregon court applied the principles of that case and held that the Yugoslavian treaty did not cover succession of property from an American citizen in the United States to a Yugoslavian citizen in Yugoslavia.

To dispel any doubt that the Oregon court may have given inadequate consideration to the case of *Clark v. Allen*, supra, or Article IV of the German treaty in construing the Yugoslavian treaty, we quote at length from the opinion as follows (*In re Stoich's Estate*, — Or. —, 349 P. (2d) 255, 265):

"In *Clark v. Allen*, supra, the court was called upon to construe Article IV of the Treaty of Friendship, Commerce and Consular Rights made with Germany December 8, 1923 (44 Stat. 2132). It had dif-

ferent provisions relating to the testamentary disposition of realty and personalty. Article IV of the Treaty, which is the provision of our interest, contained the following provisions as to the disposition of personalty:

"*Nationals of either High Contracting Party may have full power to dispose of their personal property of every kind within the territories of the other, by testament, donation, or otherwise, and their heirs, legatees and donees, of whatsoever nationality, whether resident or non-resident, shall succeed to such personal property, and may take possession thereof, either by themselves or by others acting for them, and retain or dispose of the same at their pleasure subject to the payment of such duties or charges only as the nationals of the High Contracting Party within whose territories such property may be or belong shall be liable to pay in like cases.*" (Emphasis ours.) (331 U.S. at page 514, 67 S. Ct. at page 1437, 91 L. Ed. at page 1644)

"We are of the opinion that the following words and phrases found in the German Treaty of 1923: 'Nationals of either High Contracting Party * * * within the territories of the other' are of the same import and meaning as the words and phrases found in Article II of the Treaty of 1881; that is, 'citizens of the United States in Serbia and Serbian subjects in the United States,' a phrasing which the defendants ascribe to Victorian English.

"In the Clark case, it was held that the language of Article IV of the German Treaty applied only to nationals of either of the party nations who were *within* the territory of the other. Mr. Justice Douglas, speaking for the court, says at page 515 of 331 U.S., at page 1438 of 67 S. Ct., at page 1644 of 91 L. Ed.:

"* * * In case of personalty, the provision governs the right of "nationals" of either contract-

ing party to dispose of their property within the territory of the "other" contracting party; and it is "such personal property" that the "heirs, legatees and donees" are entitled to take.

"Petitioner, however, presents a detailed account of the history of the clause which was not before the Court in *Frederickson v. State of Louisiana*, 23 How. (US) 445, 16 L. Ed. 577, *supra*, and which bears out the construction that it grants the foreign heir the right to succeed to his inheritance or the proceeds thereof. But we do not stop to review that history. For the consistent judicial construction of the language since 1860 has given it a character which the treaty-making agencies have not seen fit to alter. And that construction is entirely consistent with the plain language of the treaty. We therefore do not deem it appropriate to change that construction at this late date, even though as an original matter the other view might have much to commend it.

"We accordingly hold that Article IV of the treaty does not cover personalty located in this country and which an American citizen undertakes to leave to German nationals. * * *

"The Supreme Court of California also had before it the provisions of Article II of the Treaty of 1881 in the *Arbulich* case, *supra*, which were there urged, as here, as applicable and controlling in favor of the appellant brother. Concerning this, Mr. Justice Schauer, who spoke for the court, stated:

"Appellant contends, nevertheless, that the provisions of Article II of a treaty entered into in 1881 between the United States and the Kingdom of Serbia, 22 Stat. 964, (of which the present Republic of Yugoslavia is the successor government) and certified by the Secretary of State of the United States as remaining in full force and effect between this country and Yugoslavia, are ap-

plicable and controlling in appellant's favor on the issue of reciprocity. It may be noted that the first paragraph of Article II seemingly treats only of "citizens of the United States in Serbia [Yugoslavia] and Serbian [Yugoslav] subjects in the United States," rather than, as is the situation in the present case, of a United States citizen who dies in the United States and leaves property to a Yugoslav subject who is in *Yugoslavia*, and therefore is not here applicable. Even if we assume its applicability in that respect, however, the rights granted are only those given by each of the contracting nations "to the subjects of the most favoured nation," and do not purport to equal the rights given or guaranteed by each of the contracting nations to its *own* citizens. Consequently the treaty provisions do not establish the reciprocal rights required by the Probate Code.' 257 P. 2d at page 437.

"In that holding, we find the California court, and we think rightly, following the pattern of interpretation accorded the German treaty before the United States Supreme Court six years before in *Clark v. Allen*, *supra*. We take notice that a writ of certiorari in *Arbulich* was denied by the Supreme Court of the United States (*Arbulich v. Arbulich*, 346 U.S. 897, 74 S. Ct. 219, 98 L. Ed. 398) and later a petition for leave to file a petition for rehearing was also denied (347 U.S. 908, 74 S. Ct. 426, 98 L. Ed. 1066).

"If we correctly appraise the position of defendants, they would, notwithstanding the doctrine of *Clark v. Allen*, *supra*, have us interpret the words 'in Serbia' and 'in the United States,' as they appear in Article II of the Treaty of 1881, as referring to the place where property rights are granted rather than to the geographical location of the person claiming them. If thus construed the provision would accord to the nationals of either party wherever resident rights

similar to those enjoyed by nationals of the most favored nation wherever resident. But this we decline to do, being impressed that the construction given to the German Treaty in the Clark case applies with equal force to the Serbian Treaty of 1881, and as also held in *Arbulich's Estate*."

Again to eliminate any doubt that the Oregon court may have failed to give full consideration to the Bretton Woods International Monetary Agreement, we again quote from *In re Stoich's Estate*, — Or. —, 349 P.(2d) 255, 267, as follows:

"The protective solicitude by our legislature demonstrated by the provisions of ORS 111.070 in behalf of Oregon citizens is extended to alien heirs residing in foreign countries who inherit in Oregon. In short, the net result when observed, at least on the part of the state of Oregon, brings ORS 111.070 more in harmony with the spirit of the international agreements as contended for by defendants than their interpretation of those treaties demand. In effect, subsections (b) and (c) of § (1) of that statute place local heirs and alien heirs on a parity by insuring to each the full measure of their respective inheritances. We deem both of these conditions a reasonable exercise of legislative power, and in no sense trespassing upon any international treaty or agreement brought to our attention, but to the contrary implementing the spirit, if not the letter, of such accords.

"In arriving at our conclusions, we have given attention to the terms of what is commonly known as the Bretton Woods Agreement of 1944, cited by the defendants. Yugoslavia was one of the 44 participating governments at the United Nations Monetary and Financial Conference of that year. Later, it became one of the signatories to the Articles of Agreement formulated as the final act of the conference. The

major features of the final document provided for establishment of the International Monetary Fund and of the International Bank for Reconstruction and Development. It is common knowledge that the conference was motivated by the then prevailing international apprehension world economy would suffer seriously as an aftermath of World War II unless some devices to stabilize it were quickly undertaken by the world powers. This thought is clearly affirmed by Article I of that agreement, wherein its controlling purposes and objectives are stated.

"The defendants, however, point to its Art. XIV, § 4 and Art. XI § 2, which provide sanctions against any member nation which imposes foreign exchange restrictions contrary to the provisions of the agreement. Although not fully developed by defendants' argument, the inference is that a foreign exchange system of controls and regulations was established thereby which would nullify the restrictive character of the Yugoslav Foreign Exchange Law and implementing Regulations. The contrary is clearly evident from a reading of the entire agreement. It is replete with expressions recognizing the want of economic parity between the signing nations and the relative difficulties of some of the lesser nations in maintaining a sound monetary system, and definitely places them in an exceptional class. We turn for the moment to one of the very articles to which they point. It is significantly captioned 'Transitional Period.' Section 2 of that article is subcaptioned 'Exchange Restrictions.' Its provisions are spread in marginal note.

"Article VII, § 3(b) of the agreement is also to the same tenor in recognizing that some nations will find the need to 'impose limitations on the freedom of exchange operations.'

"The Bretton Woods Agreement gives no support to the thesis of defendants and, to the contrary, is in a large sense an international recognition that

some countries, rightly or wrongly, would impose strictures such as are exemplified by the foreign exchange laws of Yugoslavia and Bulgaria (see *State Land Board v. Rogers*, supra)."

QUESTIONS

In substance the questions presented by the petition for writ of certiorari appear to be:

(1) Whether Article II of the Treaty of Commerce between the United States of America and Serbia concluded in 1881 applies to succession of property where a national of one country dies within the country of which he is a citizen and leaves property to a resident and national of the other country; and

(2) Whether foreign exchange control laws imposed or maintained by a foreign country consistently with the International Monetary Fund Agreement preclude a state of the United States from giving effect to its law making the right of succession of nonresident alien heirs dependent upon the right of American heirs to receive payment within the United States of their foreign inheritances.

ARGUMENT

I

The construction of Article II of the Treaty of Commerce between the United States of America and Serbia concluded in 1881 (22 Stat. 63) is governed by the case of *Clark v. Allen*, 331 U.S. 503, and related cases. The treaty provision applies only to citizens of the United

States in Yugoslavia, or citizens of Yugoslavia in the United States. It covers both the disposition and acquisition of property by citizens of one country in the territory of the other, but it does not apply to the nationals of either within their own country.

Substantially the same question as the first was presented to this court by the petition for writ of certiorari in *Arbulich v. Arbulich*, 346 U.S. 897, 98 L. Ed. 398, 74 S. Ct. 219; 247 U.S. 908, 98 L. Ed. 1066, 74 S. Ct. 426, in which one of counsel for petitioners here was also of counsel for petitioner in that case. Both the writ of certiorari and the later petition for leave to file a petition for rehearing were denied.

The case of *Clark v. Allen*, supra (331 U.S. 503), construing Article IV of the treaty between the United States and Germany (44 Stat. 2132), and such cases as *Frederickson v. Louisiana*, 23 How. (U.S.) 445 (Convention between the United States and Wurttemberg, 8 Stat. 588); *Petersen v. Iowa*, 245 U.S. 170 (Treaty between United States and Denmark, 8 Stat. 340, 11 Stat. 719); *Duus v. Brown*, 245 U.S. 176 (Swedish Treaty, 8 Stat. 60, 232, 346); and *Skarderud v. Tax Commission*, 245 U.S. 633 (Norwegian Treaty, 8 Stat. 60, 346), control the construction of the language used in Article II of the Yugoslavian treaty.

In *Clark v. Allen*, supra (331 U.S. 503, 515-517), similarly as in the other cases cited, the court held the treaty did not cover a situation where a citizen of one country residing at home disposes of his personal property there in favor of a citizen or subject of the other.

The court pointed out that rights of succession to property are governed by local law, except where there may be some overriding federal policy such as a treaty, but that there was no treaty provision covering the right of succession to personal property.

The text of Article IV of the German treaty (44 Stat. 2132) construed in *Clark v. Allen*, supra (331 U.S. 503) reads:

"Nationals of either High Contracting Party may have full power to dispose of their personal property of every kind within the territories of the other, by testament, donation, or otherwise, and their heirs, legatees and donees, of whatsoever nationality, whether resident or non-resident, shall succeed to such personal property, and may take possession thereof, either by themselves or by others acting for them, and retain or dispose of the same at their pleasure subject to the payment of such duties or charges only as the nationals of the High Contracting Party within whose territories such property may be or belong shall be liable to pay in like cases." (Emphasis supplied)

Article II of the Yugoslavian treaty (22 Stat. 963) reads:

"In all that concerns the right of acquiring, possessing or disposing of every kind of property, real or personal, citizens of the United States in Serbia and Serbian subjects in the United States, shall enjoy the rights which the respective laws grant or shall grant in each of these states to the subjects of the most-favored nation."

"Within these limits, and under the same conditions as the subjects of the most favored nation, they shall be at liberty to acquire and dispose of such property, whether by purchase, sale, donation, ex-

change, marriage contract, testament, inheritance, or in any other manner whatever, without being subject to any taxes, imposts or charges whatever, other or higher than those which are or shall be levied on natives or on the subjects of the most favored state.

"*They* shall likewise be at liberty to export freely the proceeds of the sale of their property, and their goods in general, without being subjected to pay any other or higher duties than those payable under similar circumstances by natives or by the subjects of the most favored state." (Emphasis supplied)

The word "national" (used in Article IV of the German treaty) has been defined as "A word commonly used in diplomatic language and in treaties to indicate a citizen or subject of a given country." 3 Bouvier's Law Dictionary (Rawle's Third Revision). In this sense the language "*citizens of the United States in Serbia and Serbian subjects in the United States*" used in the American-Serbian treaty and "*Nationals of either High Contracting Party * * * within the territories of the other*" in the German treaty considered in *Clark v. Allen*, supra (331 U.S. 503), are indistinguishable in meaning.

The above emphasized language of the Yugoslavian treaty specifically designates and limits the class of persons to whom the treaty applies. It covers both *disposition and acquisition* of property by a citizen of the United States who may be in Yugoslavia or a citizen of Yugoslavia who may be in the United States, but it does not apply to nationals of either country within their own territory. The word "they" in the second and third paragraphs of Article II can have no other antecedent

than the words "citizens of the United States in Serbia and Serbian subjects in the United States." Only "within these limits" may *they* (citizens of the United States in Serbia [Yugoslavia] and Serbian [Yugoslavian] subjects in the United States) enjoy the privileges of the most favored nation.

Language of this kind has taken on a fixed character and well established meaning. *Clark v. Allen*, *supra* (331 U.S. 503, 516). As shown by the above cited cases, a distinction in treaties between citizens and noncitizens within a country is normal and not uncommon. Treaties are the subject of careful consideration before they are entered into and are drawn by persons competent to choose apt words to express their meaning: *Rocca v. Thompson*, 223 U.S. 317, 332. A "most favored nation" clause is limited to such matters as are within the subject matter of the particular treaty in which it is contained: *Lukich v. Department of Labor and Industries*, 176 Wash. 221, 29 P. (2d) 388, 390.

Since the meaning of the language defining the class to whom Article II of the Yugoslavian treaty and Article IV of the German treaty apply is identical, *Clark v. Allen* governs the interpretation of Article II of the Yugoslavian treaty.

II

The application of a treaty and its construction are the peculiar province of the judiciary and not matters of executive or legislative determination.

The question whether a treaty of the United States is to be construed by the executive branch of govern-

ment or otherwise has long since been answered by this court. In *Jones v. Meehan*, 175 U.S. 1, 32, this court said:

"* * * The construction of treaties is the peculiar province of the judiciary; and, except in cases purely political, Congress has no constitutional power to settle the rights under a treaty, or to affect titles already granted by the treaty itself. *Wilson v. Wall*, 6 Wall. 83, 89, 18 L. ed. 727, 729; *Reichart v. Felps*, 6 Wall. 160, 18 L. ed. 849; *Smith v. Stevens*, 10 Wall. 321, 327, 19 L. ed. 933, 935; *Holden v. Joy*, 17 Wall. 211, 247, 21 L. ed. 523, 535." (Emphasis supplied)

The application of a treaty to a given case and its construction are, as any other law, questions for the courts: *Hamilton v. Erie R.R. Co.*, 219 N.Y. 343, 114 N.E. 399, 402.

This principle in relation to the interpretation of a treaty by the State Department and a representative of a foreign country is expounded by Secretary of State Knox upon the request of the Mexican Government for an exchange of notes interpreting a provision of the extradition treaty (V Hackworth, Digest of International Law, 399) as follows:

"The department regrets to say that it deems it inadvisable to exchange notes in the sense proposed in your note, since even if the department did exchange notes setting forth an understanding as suggested by you, such notes would not, so far as the internal affairs of this Government are concerned, have the status either of a treaty or of a law, but would be merely an executive interpretation of the treaty and of the Federal statutes. This would not be binding upon the courts of this country, which

might at any time disregard the agreement incorporated in the notes, in which case it would not be possible for the department to control their decision.

* * *

The note of the State Department of April 24, 1958, interpreting Article II of the Yugoslavian treaty, referred to at page 18 of the petition for certiorari (App. G, pp. 49a-53a of Petition) is contrary to the interpretation of this court of similar language in the German treaty considered in *Clark v. Allen*, supra (331 U.S. 503). However, the note itself concludes by recognizing that it "is not to be considered as having the character of an international agreement or as effecting any modification of the treaty."

Whether the construction placed upon the treaty by the executive branch of government or a foreign country is binding is aptly discussed in *Ex parte Charlton*, 185 F. 880, 886 (aff'd. in 229 U.S. 447), in which it was said:

"* * * Undoubtedly, in view that treaties are made a part of the supreme law of the land by the Constitution which authorizes them, the courts are bound to construe such treaties as they are bound to construe any other law of the land when properly presented for interpretation, and, while the courts will give due consideration to the construction placed upon a treaty by the executive or diplomatic branches of the government, yet upon the courts is placed the duty of acting independently, and to accept full responsibility in determining the construction that is to be given to the treaties. And further, inasmuch as the treaty is by the Constitution made a law of the land, the construction placed upon some of its provisions by the departments of the foreign country with whom the treaty is made, executive, legislative,

or judicial, is not controlling. The fact that our courts' interpretation of the true meaning of such provisions may not be acquiesced in by the foreign government is of no consequence when the question is one of enforcing such treaty provisions in this country, and over a person who is within its jurisdiction."

Like any other law or contract, a treaty must be construed according to its terms. Language contained in a treaty cannot be rejected as surplusage nor can it be said to have been inserted carelessly or inadvisedly. *Foster v. Neilson*, 2 Pet. (U.S.) 253, 308-309. The language of Article II of the Yugoslavian treaty becomes "stilted" only when the construction urged by petitioners is attempted to be applied.

III

The construction and application of Article II of the Yugoslavian treaty is governed by this court's construction of Article IV of the German treaty in *Clark v. Allen*, 331 U.S. 503.

Because of the similarity of language and identity of meaning of the language used in Article II of the Yugoslavian treaty and Article IV of the German treaty construed in *Clark v. Allen*, supra (331 U.S. 503), the construction placed on Article IV of the German treaty is likewise applicable to Article II of the Yugoslavian treaty.

Neither *Spoya's Estate*, 129 Mont. 83, 282 P. (2d) 452, nor *Ginn's Estate*, — Mont. —, 347 P. (2d) 467 (Pet. for Cert., p. 25), mention the treaty as the basis of decision, and the unreported case of *Succession of Vlaho*

(Pet. for Cert., p. 25) was decided by the District Court for the Parish of Orleans (Pet. for Cert., App. H, p. 69a) on the mistaken premise that the interpretation of treaties was a political and not a judicial question.

Since a determination has already been made that language of similar import and meaning used in Article IV of the German treaty applies only to nationals of one country in the territory of the other and not to nationals of the respective countries living at home, such pronouncement by this court is equally binding with respect to Article II of the Yugoslavian treaty, and the courts and executive and legislative branches of the states and the United States are bound accordingly.

IV

The Bretton Woods Agreement (60 Stat. 1401) does not support petitioners' thesis that the United States by becoming a member of the International Monetary Fund gave acceptance to the Yugoslavian foreign exchange control laws and that a state law requiring reciprocal rights of inheritance is a forbidden entry in matters of foreign affairs.

The first point was answered by Justice Warner in *In re Stoich's Estate*, supra (— Or. —, 349 P. (2d) 255, 267-268), as follows:

"The Bretton Woods Agreement gives no support to the thesis of defendants and, to the contrary, is in a large sense an international recognition that some countries, rightly or wrongly, would impose strictures such as are exemplified by the foreign exchange laws of Yugoslavia and Bulgaria * * *"

The second point was answered by this court in *Clark v. Allen*, supra (331 U.S. 503, 516-517):

"* * * The challenge to the statute is that it is an extension of state power into the field of foreign affairs, which is exclusively reserved by the Constitution to the Federal Government. That argument is based on the fact that under the statute the right of nonresident aliens to take by succession or testamentary disposition is dependent upon the existence of a reciprocal right on the part of citizens of the United States to take personalty on the same terms and conditions as residents and citizens of the other nation. * * *

"In *Blythe v. Hinckley*, 180 US 333, 45 L. ed 557, 21 S. Ct 390, California had granted aliens an unqualified right to inherit property within its borders. The alien claimant was a citizen of Great Britain with whom the United States had no treaty providing for inheritance by aliens in this country. The argument was that a grant of rights to aliens by a State was, in absence of a treaty, a forbidden entry into foreign affairs. The court rejected the argument as being an extraordinary one. The objection to the present statute is equally far fetched."

This issue raised by petitioners having already been authoritatively answered presents no new question for review.

SUMMARY OF ARGUMENT

The construction of Article II of the Treaty of Commerce between the United States of America and Serbia (22 Stat. 963) is governed by this court's interpretation of the similar provision in the German treaty construed in *Clark v. Allen*, 331 U.S. 503. It has long since been

laid down by this court that the construction and application of treaties are matters for judicial and not executive or legislative determination. Because of the similarity of language and import of meaning of Article II of the Yugoslavian treaty and Article IV of the German treaty, the courts of this country and the executive and legislative branches of government in their construction of this article of the Yugoslavian treaty are bound by the decision in *Clark v. Allen*, supra. Similarly also as decided in *Clark v. Allen*, statutes such as ORS 111.070 are not by reason of the Bretton Woods Agreement an invasion of the Federal Government's authority in matters of foreign policy and foreign affairs.

CONCLUSION

For the reasons advanced the respondent submits that the petition for certiorari be denied.

Respectfully submitted,

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APPENDIX A**Oregon Revised Statutes 111.070**

"(1) The right of an alien not residing within the United States or its territories to take either real or personal property or the proceeds thereof in this state by succession or testamentary disposition, upon the same terms and conditions as inhabitants and citizens of the United States, is dependent in each case:

"(a) Upon the existence of a reciprocal right upon the part of citizens of the United States to take real and personal property and the proceeds thereof upon the same terms and conditions as inhabitants and citizens of the country of which such alien is an inhabitant or citizen;

"(b) Upon the rights of citizens of the United States to receive by payment to them within the United States or its territories money originating from the estates of persons dying within such foreign country; and

"(c) Upon proof that such foreign heirs, distributees, devisees or legatees may receive the benefit, use or control of money or property from estates of persons dying in this state without confiscation, in whole or in part, by the governments of such foreign countries.

"(2) The burden is upon such nonresident alien to establish the fact of existence of the reciprocal rights set forth in subsection (1) of this section.

"(3) If such reciprocal rights are not found to exist and if no heir, devisee or legatee other than such alien is found eligible to take such property, the property shall be disposed of as escheated property."

IN THE
Supreme Court of the United States

OCTOBER TERM, 1959

No. **102**

ANDJA KOLOVRAT, DRAGO STOJIC, DRAGICA SUNJIC,
NEDA TURK, JOSIP BULGAN, JURE ZIVANOVIC,
MARA TOLIC and MILAN STOJIC, and also BRANKO
KARADZOLE, Consul General of Yugoslavia at
San Francisco, California, *Petitioners*

v.

STATE OF OREGON, acting by and through the State
Land Board, *Respondent*

LUTVO ZEKIC, IBRO ZEKIC, HABIBA TURKOVIC, DZEDJA
POPOVAC, SEFKO MURADBASIC, DIKA MURADBASIC,
MURTA BRKIC, MILKA ZEKIC, JASMINA ZEKIC and
RAJKA ZEKIC, and BRANKO KARADZOLE, Consul
General of Yugoslavia at San Francisco, Cali-
fornia, *Petitioners*

v.

STATE OF OREGON, acting by and through the State
Land Board, *Respondent*

PETITIONERS' REPLY BRIEF

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IN THE
Supreme Court of the United States

OCTOBER TERM, 1959

No. 958

ANDJA KOLOVRAT, DRAGO STOJIC, DRAGICA SUNJIC,
NEDA TURK, JOSIP BELGAN, JURE ZIVANOVIC,
MARA TOLIC and MILAN STOJIC, and also BRANKO
KARADZOLE, Consul General of Yugoslavia at
San Francisco, California, *Petitioners*

v.

STATE OF OREGON, acting by and through the State
Land Board, *Respondent*

LETVO ZEKIC, IBRO ZEKIC, HABIBA TURKOVIC, DZEDJA
POPOVAC, SEFKO MURADBASIC, DIKA MURADBASIC,
MURTA BRKIC, MILKA ZEKIC, JASMINA ZEKIC and
RAJKA ZEKIC, and BRANKO KARADZOLE, Consul
General of Yugoslavia at San Francisco, Cali-
fornia, *Petitioners*

v.

STATE OF OREGON, acting by and through the State
Land Board, *Respondent*

PETITIONERS' REPLY BRIEF

I

The respondent assumes, as did the Court below, that construing a treaty is a sort of mechanical process in which the meaning of phrases can be determined without regard to their context, and wholly without reference to the treaty's purpose. This is, however, a mis-

taken assumption, for "all parts of a treaty are to receive a reasonable construction with a view to giving a fair operation to the whole", *Sullivan v. Kidd*, 254 U.S. 433, 439 (1921), since "[i]t is a canon of interpretation to so construe a * * * treaty as to give effect to the object designed, and for that purpose all of its provisions must be examined * * *". *In re Ross*, 140 U.S. 453, 475 (1891). In applying this principle, this Court has, for example, construed "Americans" as including foreign seamen shipping on American vessels, *In re Ross*, *supra*; "States of the Union" as including the District of Columbia and the several territories, *DeGeofroy v. Riggs*, 133 U.S. 258 (1890); "trade" as encompassing the operation of a pawn-shop, *Asakura v. Seattle*, 265 U.S. 332 (1924); "vessel" as including its cargo and all persons aboard, *Ford v. United States*, 273 U.S. 593 (1927); and "goods and effects" as including real-estate. *Todok v. Union State Bank*, 281 U.S. 449 (1930).

Since treaties "must receive a fair interpretation * * * so as to carry out their manifest purpose", *Wright v. Henkel*, 190 U.S. 40, 57 (1903), it follows that "[i]n order to determine whether * * * a construction is admissible, regard should be had to the purpose of the treaty". *Santorincenzo v. Egan*, 284 U.S. 30, 37 (1931). Accordingly, this Court will reject a construction that is "inconsistent with the general purpose and object" of the treaty, *Sullivan v. Kidd*, 254 U.S. 433, 440 (1921), or that would render it "null and inefficient". *DeGeofroy v. Riggs*, 133 U.S. 258, 270 (1890). The Petition (pp. 16-22) makes it abundantly clear, and the respondent makes no effort to refute that the construction adopted by the Court below is "inconsistent with the general purpose and object" of

the Convention and would render it substantially "null and inefficient".

II

There is, of course, no question but that it is for the Courts to determine the construction to be given a treaty, and the petitioners do not contend otherwise. But in its day-to-day conduct of foreign affairs and protection of American rights abroad, the Executive must necessarily, and does construe international agreements to which the United States is a party.¹ While, concededly, such constructions are not *binding* on the Courts, they are not to be disregarded, as the respondent seems to contend. On the contrary, they are always to be accorded "much weight". *Charlton v. Kelly*, 229 U.S. 447, 468 (1913); *Sullivan v. Kidd*, 254 U.S. 433, 442 (1921). Moreover, in the circumstances of this case (pet. pp. 18-21) the Executive construction here would appear to be entitled to even greater weight.

¹ The truncated 1910 statement of Secretary Knox quoted by the respondent (pp. 15, 16) does not represent the policy of the State Department as it was then or at any other time. The Department of State has, indeed, on innumerable occasions undertaken to construe treaties, in exchanges of notes and otherwise. See, e.g., *United States v. Pink*, 315 U.S. 203, 224 n. 7 (1942); *Factor v. Laubenhimer*, 290 U.S. 276, 295 (1933); *Sullivan v. Kidd*, 254 U.S. 433, 438 (1921); *Charlton v. Kelly*, 229 U.S. 447, 466-472, 475 (1912); *Castro v. DeUriarte*, 16 Fed. 93, 98 (S.D.N.Y. 1883). The part of Secretary Knox' statement which the respondent fails to quote shows that his reason for not concurring in Mexico's construction of the treaty there concerned was that "it is not entirely clear to the department that the contention which you make regarding the meaning of Article VIII * * * is the only one which may properly be placed upon it * * *." V Hackworth, *Dig. Int. L.* (1943) 399. Secretary Knox did not hesitate to construe a treaty when he was confident of its meaning. See, *Charlton v. Kelly*, *loc. cit. supra*.

Thus, in *United States v. Reid*, 73 F. 2d 153, 156 (C.A. 9th, 1934), cert. denied 299 U.S. 544 the Court said:

This historical attitude of the state department should be of great, if not controlling, weight in construing our treaty * * *.

* * *

This rule would apply with even more cogency where the state department * * * negotiating with the other treaty-making power concerning the meaning and effect of a treaty, * * * insists upon a not unreasonable construction of its terms which is acquiesced in by the other power.

Somewhat similarly, the applicable principle is stated as follows in the American Law Institute's *Restatement of the Foreign Relations Law of the United States* (Tentative Draft No. 3, 1959), § 136:

In exercising the authority * * * to interpret international agreements for purposes of determining their effects as internal law, courts in the United States give great weight to the interpretations of the President. In applying this rule the courts take into account:

(a) The fact that a judicial interpretation contrary to an executive interpretation previously communicated to another party to the international agreement may result in difficulties for the United States in the conduct of its foreign relations and possibly subject the United States to liability under international law for breach of the international agreement; * * *

Nor, indeed, will the Court reject out of hand a Congressional construction of a treaty inhering to the enactment of legislation. *Pigeon River Improvement, Slide & Boom Co. v. Charles W. Cox, Ltd.*, 291 U.S. 138 (1934).

III

The "similarity" which the respondent and the Court below purport to see between the treaty provision here involved, and that with which *Clark v. Allen*, 331 U.S. 503, 514-516 (1947) was concerned, is wholly illusory. The latter empowered nationals of one country "to dispose of their personal property of every kind within the territories of the other" and provided that their donees, *inter vivos* or *causa mortis*, would succeed thereto, regardless of the donee's residence or nationality. Obviously, "within the territories of the other" describes "their personal property of every kind" and not the donors, as the respondent and the Court below would suggest by the use of italics and asterisks. See Resp. Br., pp. 4, 5, 12; Pet., pp. 12-14, 18a, 19a. Obviously too, as this Court held in *Clark*, the treaty provision there involved did not grant nationals of one country any right to acquire property located in the territories of the other, except as donees of the fellow-country-men.

On the other hand, the treaty provision with which we are here concerned, clearly grants to citizens of one country the much broader right to acquire property within the territories of the other, by inheritance or by any other means, without regard to the nationality or the residence of the donor or other transferor. In *Clark* the only question posed (and determined negatively) was whether under the limited treaty provision there in issue, a German national had any right to succeed by inheritance to property in the United States of an American decedent. Here, however, the question is whether the citizens of one country to whom the Convention grants the broad right to acquire property

located in the territories of the other by any means, include such citizens as are not themselves within such territories.

IV

The respondent contends (p. 19) that a State's power to deny rights of inheritance to a foreigner solely because of the existence in his country of foreign exchange controls, even though such controls are maintained consistently with an international agreement to which the United States is a party (p. 10), finds support in holdings of this Court that a State may, without the compulsion of an overriding treaty, voluntarily abrogate, unconditionally or otherwise, the common-law disability of foreigners to inherit. This argument is as far-fetched and untenable as those rejected in the cases that respondent cites.

Rights of inheritance of non-resident aliens are, of course, governed by the public policy of a state, as established by its law, unless its public policy and its law are inconsistent with federal public policy as established by federal action within the constitutional competence of the federal government. *Clark v. Allen*, *supra*, 331 U.S. at 517. In the absence of relevant federal public policy so established, a State is free to choose and apply its public policy as it will. Here, however, federal public policy, as established by the adherence of the federal government to the International Monetary Fund Agreement, is that Yugoslavia may maintain exchange controls consistent with the Agreement. In this circumstance, it is clearly inconsistent with federal public policy established by federal action within the constitutional competence of the federal government, for a State to deny a Yugoslav

resident and citizen rights of inheritance that he would otherwise have under its laws, solely because of the existence of such exchange controls in Yugoslavia. *United States v. Pink*, 315 U.S. 203 (1942); *Perutz v. Bohemian Discount Bank*, 304 N.Y. 533, 110 N.E. 2d 6 (1953).

The emptiness of the respondent's position on this score is evidenced by the fact that the complaint is merely that Yugoslavia has foreign exchange controls, and not that the American distributees of Yugoslav estates are not receiving their distributive shares in dollars in the United States. See, *Pet.* pp. 9, 10. In this connection, it should be noted that in the International Monetary Fund's *Eleventh Annual Report on Exchange Restrictions* (1960), p. 352, the following is said concerning transfers of capital from Yugoslavia:

All transfers of a capital nature by residents or nonresidents are subject to individual license. * * * A Decision of the Yugoslav Federal Executive Council of October 14, 1955 *requires* the Yugoslav authorities to continue to permit the remittance of inheritances to citizens of the United States, provided that the remittance is requested within three years from the date of distribution of the estate. [Emphasis supplied.]

It is significant, too, that Article II of the Economic Cooperation Agreement of 1952 between the United States and Yugoslavia, T.I.A.S. 2384,² provides that

1. In order to achieve the maximum economic strength through the employment of assistance received from the Government of the United States of America, the Government of the Federal

² Entered into pursuant to Public Law 472, 80th Cong., as amended, 60 Stat. 137, Tit. 22 U.S.C. Sec. 1501 *et seq.*

People's Republic of Yugoslavia will use its best endeavors:

* * *

(c) to assure the stability of its currency, the validity of its rate of exchange, and its internal financial stability.

This provision was included in such agreement pursuant to the statutory requirement, Tit. 22 U.S.C. §1513(b)(2), that foreign economic cooperation agreements provide for the taking by the recipient country of

* * * financial and monetary measures necessary to stabilize its currency, establish or maintain a valid rate of exchange * * * and generally to restore or maintain confidence in its monetary system * * *.

Obviously, such "endeavors" and "measures" must include, when appropriate to the achievement of the required ends, the regulation of foreign exchange transactions, particularly capital transfers.

In the circumstances, it is wholly incongruous that a State be permitted to consider the existence of foreign exchange controls in Yugoslavia as being offensive to *its* public policy, and on that ground to deny to citizens of Yugoslavia rights of inheritance to which they otherwise would be entitled under its laws.

IN CONCLUSION

This controversy involves much more than the inheritances which the Court below has denied the petitioners, and has permitted Oregon to escheat. It involves not only the meaning and effect of a treaty in its internal application—as granting or not granting rights to non-resident aliens—but it is fraught with implication

for American rights abroad. It raises questions, too, of the force and dignity to be accorded the construction given to a treaty by the Executive, communicated to, and accepted by the other party to it, and relied on by the Congress and the Executive as a basis for the protection of American rights abroad. It poses for resolution the question whether a State may deny rights to foreigners by reason of measures taken by their government with the approval and consent of the United States given in the furtherance of its foreign policy. While the outcome is, of course, important to the petitioners, it must be of immeasurably greater importance to the United States. The Court has the benefit of the views of Oregon. It would, we think, be but fitting if the United States were able to express its views, for its interests, no less than the petitioners', are challenged by what Oregon has done.

The petition should be granted.

Respectfully submitted,

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In the Supreme Court of the United States

OCTOBER TERM, 1960

ANDJA KOLOVRAT, DRAGO STOJIC, DRAGICA SUNJIC, NEDA TURK,
JOSIP BULGAN, JURE ZIVANOVIC, MARA TOLIC and MILAN STOJIC,
and also BRANKO KARADZOLE, Consul General of Yugoslavia at
San Francisco, California, PETITIONERS,

v.

STATE OF OREGON, acting by and through the State Land Board

LUTVO ZEKIC, IBERO ZEKIC, HABIBA TURKOVIC, DZEDJA POPOVAC,
NEFKO MURADBASIC, DIKA MURADBASIC, MURTA BRKIC, MILKA
ZEKIC, JASMINA ZEKIC and RAJKA ZEKIC and BRANKO KARADZOLE,
Consul General of Yugoslavia at San Francisco, California,
PETITIONERS,

v.

STATE OF OREGON, acting by and through the State Land Board

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME
COURT OF THE STATE OF OREGON

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

J. LEE RANKIN,

Solicitor General,

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In the Supreme Court of the United States

OCTOBER TERM, 1960

No. 102

ANDJA KOLOVRAT, DRAGO STOJIC, DRAGICA SUNJIC, NEDA TURK,
— JOSIP BULGAN, JURE ZIVANOVIC, MARA TOLIC and MILAN STOJIC,
and also BRANKO KARADZOLE, Consul General of Yugoslavia at
San Francisco, California, PETITIONERS,

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STATE OF OREGON, acting by and through the State Land Board

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*ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME
COURT OF THE STATE OF OREGON.*

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

OPINIONS BELOW

The Circuit Court of the State of Oregon for the County of Multnomah rendered no opinion. Its orders denying the petitions of the State of Oregon for the escheat of the property involved and directing that distribution be made (Pet. App. C, pp. 33a-38a) are

not reported. The opinion of the Supreme Court of the State of Oregon (Pet. App. A, pp. 1a-26a) is reported at 349 P. 2d 255.

JURISDICTION

The judgments of the Supreme Court of the State of Oregon were entered on January 13, 1960. A timely motion for a rehearing was filed by petitioners on February 26, 1960, and was denied on March 1, 1960. The petition for a writ of certiorari was filed on May 26, 1960. The jurisdiction of this Court is invoked under 28 U.S.C. 1257 (3).

QUESTIONS PRESENTED

1. Whether, under the terms of Article II of the Convention Between The United States of America and Serbia, For Facilitating And Developing Commercial Relations, of 1881, now in force between the United States and Yugoslavia, a citizen of one of the contracting parties, domiciled in the country of his citizenship, has the right to acquire by inheritance property within the other country.

2. Whether the foreign exchange laws of Yugoslavia would preclude an American citizen domiciled in the United States from obtaining the benefit of inherited property located in Yugoslavia.

STATUTES AND TREATIES INVOLVED

The relevant provisions of the Oregon Revised Statutes, the Yugoslav Laws Regulating Payment Transactions with Foreign Countries, the Treaty Between the United States of America and Serbia, For Facilitating and Developing Commercial Rela-

tions of October 2/14, 1881, and the Articles of Agreement of the International Monetary Fund of December 27, 1945, are set forth in Appendix A, *infra*, pp. 16-21.

STATEMENT

Joe Stoich and Murharem Zekich died intestate in Oregon in December 1953, leaving certain heirs and next-of-kin domiciled in Yugoslavia who, along with the Consul General of Yugoslavia, are the petitioners in this Court. Acting by virtue of Section 111.070 of the Oregon Revised Statutes, *infra*, pp. 16-17, the State of Oregon filed petitions in the Circuit Court of Oregon for the County of Multnomah for the escheat of the estate. The basis of the claim of escheat was that petitioners had no right in the respective estates and that there were no other heirs.

The Circuit Court, holding that the burden of proving the presence of reciprocity required by the Oregon statute had been met, issued orders denying the petitions of the State and directed that distribution be made. (Pet. App. C, pp. 33a-38a). The Supreme Court of Oregon reversed and ordered the escheat of both estates. (Pet. App. A, pp. 1a-26a; Pet. App. B, pp. 27a-32a). It held (1) that Article II of the Convention Between the United States and Serbia, For Facilitating and Developing Commercial Relations, of 1881, 22 Stat. 963, *infra*, pp. 17-19, now in force between the United States and Yugoslavia, does not apply to the estate of a United States citizen who dies intestate in the United States leaving heirs or next-of-kin who are Yugoslav subjects residing in Yugoslavia; and (2) that, regardless of the adherence

of the United States and Yugoslavia to the Articles of Agreement of the International Monetary Fund, 60 Stat. 1401, T.I.A.S. 1501, *infra*, pp. 19-21, the foreign exchange controls existing in Yugoslavia as of the date of the decedents' deaths prevented petitioners from meeting the burden of showing the right of an American citizen to receive payment in money from a Yugoslav state. (Pet. A, pp. 20a-26a).

INTEREST OF THE UNITED STATES

The decision of the Supreme Court of Oregon is in direct conflict with the construction which has been consistently placed upon the Convention Between the United States of America and Serbia, For Facilitating And Developing Commercial Relations, of 1881, by the Department of State and the Yugoslav Government. It is in the interest of the United States that the construction agreed upon by both contracting parties be maintained.¹ Further, there are numerous similar treaties existing between the United States and other countries.

REASONS FOR GRANTING THE WRIT

Under Oregon law, petitioners concededly are entitled to the decedents' estates here involved if, under Yugoslav law, an American citizen domiciled in the United States is entitled (1) to inherit from a Yugoslav domiciliary, and (2) to obtain the benefits of the property thus inherited. Oregon Revised

¹ The Yugoslav Government has called the attention of the State Department to the decision of the court below (see App. B, *infra*, pp. 40-42).

Statutes, Section 111.070, *infra*, pp. 16-17. In holding that the requisite reciprocity does not exist, the Oregon Supreme Court has read Article II of the Convention of 1881 between the United States and Yugoslavia, *infra*, pp. 18-19, as not conferring rights of inheritance where a citizen of one country dies leaving next-of-kin who are citizens of, and domiciled in, the other country. As an alternative ground for directing an escheat of the estates to Oregon, the court below determined that monetary controls provided by Yugoslav law would preclude an American citizen from receiving the assets of the estate of a Yugoslav decedent.

Both of these holdings are erroneous. The Convention of 1881 provides reciprocal rights of acquisition and disposal by inheritance in the circumstances of this case and has consistently been so interpreted by both Governments. And the existing Yugoslav monetary controls relied upon by the court below are subject to the provisions of both the Convention of 1881 and the Articles of Agreement of the International Monetary Fund (the Bretton Woods Agreement), *infra*, pp. 19-21. Thus, these controls would not interfere with an American citizen's acquisition of the assets of a Yugoslav decedent's estate.

Further, the questions are of recurring importance and there is a conflict of decisions. A number of other states have reciprocity requirements substantially identical to those imposed by the Oregon statute. In connection with the application of the Montana statute, the Supreme Court of that state has held that the Convention of 1881 applies in this situation.

The United States has also entered into treaties with several other countries which contain provisions similar to those of the 1881 Convention.

1. Article II of the Convention of 1881, *infra*, pp. 18-19, provides in relevant part that "[i]n all that concerns the right of acquiring, possessing or disposing of every kind of property, real or personal, citizens of the United States in Serbia and Serbian subjects in the United States, shall enjoy the rights which the respective laws grant * * * in each of these states to the subjects of the most favored nation." The Oregon Supreme Court took the phrases "in Serbia" and "in the United States" as modifying "citizens of the United States" and "Serbian subjects" respectively. This reading led the court to its conclusion that the Convention confers no rights of inheritance upon an American citizen or Yugoslav subject domiciled (as are petitioners here) in the country of his citizenship.

The State Department and the Yugoslav Government have consistently rejected this construction of the Convention. As is reflected by the correspondence between the two Governments, it is their understanding that the critical phrases were not intended to place a residence requirement upon the rights of inheritance granted by the Convention. See App. B, *infra*, pp. 22ff, especially 28-31. Rather, the phrases modify "shall enjoy." In other words, an American citizen—irrespective of domicile—shall enjoy in Serbia (i.e. Yugoslavia) the same rights of inheritance as are conferred by the latter country upon the citizens of the "most favored nation" (and vice versa). And, in light of the treaties which the United States has

entered into with Argentina, France and Switzerland,² and the treaties between Yugoslavia and Poland and Czechoslovakia,³ the effect of the "most favored nation" clause is to grant the American citizen and the Yugoslav subject the same rights of inheritance in the other country as he possesses in his own.

It is settled that the construction placed upon a treaty by the "political department" of the government is entitled to great weight. *Neilsen v. Johnson*, 279 U.S. 47, 52; *Charlton v. Kelly*, 229 U.S. 447, 468; *Factor v. Laubenheimer*, 290 U.S. 276, 294, 295. Moreover, "where a treaty fairly admits of two constructions, one restricting, the other enlarging, rights which may be claimed under it, the more liberal interpretation is to be preferred." *Bacardi Corp. v. Domenech*, 311 U.S. 150, 163; citing *Jordan v. Tashiro*, 278 U.S. 123, 127; *Neilsen v. Johnson*, *supra*.

2. The background of the Convention of 1881 reflects that the construction of the contracting parties, rather than that of the Oregon court, is correct. The "negotiations and diplomatic correspondence of the contracting parties relating to the subject matter" are, of course, relevant on the question of the meaning of a treaty. *Factor v. Laubenheimer*, 290 U.S.

² Treaty of Friendship, Commerce, and Navigation, Between the United States And The Argentine Confederation of 1853, 10 Stat. 1005, 1009, I Malloy 20; Consular Convention With France of 1853, 10 Stat. 992, I Malloy 528; Convention With the Swiss Confederation of 1850, 11 Stat. 587, II Malloy 1763.

³ Yugoslav-Polish Treaty, 30 League of Nations Treaty Series 455; Yugoslav-Czechoslovakia Treaty, 85 League of Nations Treaty Series 185.

276, 294-295; *Neilsen v. Johnson*, 279 U.S. 47, 52; *cf. In Re Ross*, 140 U.S. 453, 467.

a. The Serbian Convention was preceded by, *inter alia*, the Consular Convention with France of 1853, 10 Stat. 992, 996, I Malloy 528, 531, and the Treaty of Friendship, Commerce, and Navigation, Between the United States and the Argentine Confederation of 1853, 10 Stat. 1005, 1009; I Malloy 20, 23. These treaties, in common with the Convention of 1881, and other treaties,⁴ dealt specifically with the matter of reciprocal rights of inheritance. Article VII of the French treaty granted " * * * the same rights within its territory in respect to real and personal property, and to inheritance, as are enjoyed there by its own citizens." And the Argentine treaty provides that the citizens of the contracting parties "shall reciprocally enjoy the same privileges, liberties, and rights as native citizens * * *."

The diplomatic correspondence in connection with the execution of these treaties reveals that the intent of the negotiators was to establish liberal reciprocal rights for the exchange of properties between the citizens of the United States and of foreign countries regardless of their residence. In fact, the French plenipotentiary addressed himself expressly to the situation of the naturalized American citizen of French

⁴ See Convention with the Swiss Confederation of 1850, 11 Stat. 587, II Malloy 1763; Convention with Brunswick and Luneburg of 1854, 11 Stat. 601; Treaty of Amity, Commerce, and Consular Privileges between the United States and the Republic of Salvador, 1870, 18 Stat. 725, 730; Treaty of Friendship, Commerce and Navigation Between The United States of America and the Republic of Peru, 1870, 18 Stat. 698, 703.

birth who dies leaving heirs resident in Europe. He noted that, under the varying laws of the several jurisdictions in the United States, inheritance by the heirs would become "a source of difficulties." Note of the French Plenipotentiary of August 11, 1853, D.S., 16 Notes from the French Legation, 6 *Miller, Treaties and Other International Acts of the United States*, 192. And John S. Pendleton, who negotiated the Argentine treaty on behalf of the United States, was directed to acquire rights "upon the most extended principles of reciprocity". D.S., 15 Instructions, Argentina, 19-26, 6 *Miller, supra*, 210.⁵

b. There is nothing to indicate that the negotiators of the Serbian Convention had any different intent than the negotiators of the French and Argentine treaties. Specifically, there is no basis for an inference that the negotiators desired to restrict the rights of inheritance granted under the Convention to citizens of one country who were resident in the other.

The Serbian Convention was negotiated contemporaneously with a treaty with Rumania.⁶ The correspondence on behalf of the United States was handled

⁵ It is noted that A. Dudley Mann, in negotiating the Convention with the Swiss Confederation of 1850, stated that he was instructed to acquire commercial and property rights which "place us upon a basis that it [the Swiss Republic] places no other nation; to *assimilate our privileges*, in every sense but a political one, * * * *with those of native citizens* * * *." [Emphasis added.] Report on Negotiations dated November 30, 1850, printed as Senate Confidential Document No. 1, 31st Cong., 2d Sess., 5 *Miller, supra*, 861.

⁶ The commercial treaty with Roumania was never ratified by Roumania, although it was ratified by the United States Senate. Regular Confidential Printed Documents before the Senate of the United States in Executive Session, Vol. 5 (44th to 47th Congress, March 9, 1875 to February 19, 1883, page 894 (1915)).

by the same individuals (John A. Kasson and Eugène Schuyler) and the relevant provisions of both treaties are *verbatim*. By Instruction No. 170 of the Department of State, dated May 4, 1880, Kasson was directed, in pertinent part, as follows:

In view of the negotiations you are conducting with Roumania for the conclusion of proper treaty relations, it is desirable that you should at the earliest practicable moment familiarize yourself with the provisions of the Anglo-Roumanian Treaty, and that, in these negotiations, you should omit no precaution to secure for the benefit of American commerce all of the privileges which may be enjoyed by the most favored nation.

In accordance with this instruction, the American negotiators inserted into the treaty projet a provision, modelled after the corresponding provision of the Anglo-Roumanian treaty, which contained the phrases "citizens of the United States in Roumania" and "Roumanian subjects in the United States" in precisely the same context as those terms appear in the Serbian treaty, as well as the "most favored nation" clause. In Dispatch No. 29 of the Department of State, dated January 4, 1881, Schuyler (who had succeeded Kasson by this time) made reference to the amendment and pointed out that the subjects of other foreign nations enjoyed no greater inheritance rights than the subjects of Roumania and could scarcely ask for larger rights in Roumania than those possessed by Roumanian citizens. Schuyler obviously thought that the added language had the effect of granting the *same* rights to

the American citizen as possessed by Roumanians. Significantly, nowhere in any of the correspondence is there a suggestion that these rights would be conditioned upon the residence of the decedent.

3. The Supreme Court of Montana has, on two occasions, arrived at a conclusion opposite to that of the court below. *In re Spoya's Estate*, 129 Mont. 83, 282 P. 2d 452; *In re Ginn's Estate*, 347 P. 2d 467. In both cases the court expressly held that reciprocal rights of inheritance did exist between the United States and Yugoslavia as of 1949 and 1955, respectively.

Respondent points, however, to *In re Arbalich's Estate*, 41 Cal. 2d 86, 257 P. 2d 433, certiorari denied, 346 U.S. 897, in which the Supreme Court of California held that the evidence before it was insufficient to show the existence of reciprocal rights of inheritance between the United States and Yugoslavia as of March 21, 1947. But the California court did not have before it either the construction given to the Convention of 1881 by the Department of State and Yugoslav Government or the similar treaties between the United States and other countries. Nor were the views of the contracting parties referred to in the petition for certiorari filed in this Court.

Clark v. Allen, 331 U.S. 503, heavily relied upon by the court below, is clearly distinguishable. There, this Court held that Article IV of the Treaty of Friendship, Commerce and Consular Rights between the United States and Germany of December 8, 1923, 44 Stat. 2132, did not entitle German nationals (resident in Ger-

manly) to personalty located in the United States which had been left to them by the testamentary disposition of an American citizen. The terms of Article IV, however, are markedly different from those of the Convention of 1881. Article IV provides, in pertinent part, that "[n]ationals of either High Contracting Party may have full power to dispose of their personal property of every kind within the territories of the other, by testament * * *." Thus, as this Court noted (331 U.S. at 515), in the case of personalty, the German treaty governs only "the right of 'nationals' of either contracting party to dispose of their property within the territory of the 'other' contracting party; and it is 'such personal property' that the 'heirs, legatees and donees' are entitled to take." That the German treaty was intended to have a relatively restrictive application is also seen from the diplomatic correspondence pertaining to it. See, *e.g.*, letter from the Secretary of State to the German Ambassador (Wiedfeldt), dated July 25, 1923, II Foreign Relations of the United States (1923), p. 22.

4. The alternative holding of the court below that existing Yugoslav monetary controls would prevent an American citizen from obtaining the benefit of inherited property in Yugoslavia is also erroneous. Article 8 of the Yugoslav Laws Regulating Payment Transactions with Foreign countries, *infra*, p. 17, makes these monetary controls subject to all treaties between Yugoslavia and the United States. Moreover, Yugoslavia is a signatory to the Bretton Woods Agreement, *infra*, pp. 19-21, in which reciprocal rights for the interchange of funds is recognized. The Agreement clearly obligates the countries participating

to maintain only such controls as are permitted by its terms and within such limitations as are provided therein. There is nothing in the Agreement which would allow Yugoslavia to preclude the inheritance by an American citizen and resident of the estate of a Yugoslav.

The report of Senate Foreign Relations Committee on the Settlement of Pecuniary Claims Agreement of 1948, 62 Stat. 2658, notes that Article 5 of the Bretton Woods Agreement "obliges Yugoslavia to continue to grant most-favored-nation treatment to Americans in ownership and acquisition of assets in Yugoslavia, * * * [and further that] Yugoslavia is required, by Article 10, to authorize persons in Yugoslavia to pay debts to United States nationals, firms, or agencies, and, so far as feasible, to permit dollar transfers for such purposes." Senate Rep. No. 800, 81st Cong., 1st Sess., p. 4. And as evidenced by the recent correspondence between the Department of State and the Embassy of Yugoslavia, App. B, *infra*, pp. 22-42, the Yugoslav government similarly recognizes the binding effect of the Convention.

5. The questions are of recurring importance in the administration of commercial treaties with foreign countries. There are substantially identical statutes placing requirements upon the right of aliens to inherit in at least six other states.⁷ In addition, four states impound the shares of decedent estates payable to non-resident aliens in the absence of a showing that the

⁷ California Probate Code, Sec. 259; Iowa Code, Sec. 567.1; Louisiana Rev. Civ. Code, Art. 1490; Montana Rev. Code, Sec. 91-520; Nevada Rev. Stat., Sec. 134-230; Oklahoma Stat., Title 60, §121.

laws of such foreign countries meet the requirements of the respective state probate codes.⁸

Further, the United States has entered into numerous other treaties of commerce which contain provisions substantially the same as those of the Convention of 1881.⁹ Thus, the construction placed upon the Convention of 1881 could have an effect upon the future interpretation of other treaties. In addition, if the decision of the court below is permitted to stand and the several states are permitted to disregard the interpretation given by the contracting parties to treaties of this kind, the foreign signatories will undoubtedly henceforth construe the treaties in a manner detrimental to the interests of American citizens.

⁸ New York Sur. Ct. Act, Sec. 269; Pennsylvania Stat., Tit. 20, Secs. 1156, 320.737; Ohio Rev. Code, Sec. 2113.81; Wisconsin Stat., Sec. 318-06(8).

⁹ See *e.g.*, Consular Convention with France of 1853, *supra*; Treaty of Friendship, Commerce, and Navigation, between the United States and the Argentine Confederation of 1853, *supra*; Convention with the Swiss Confederation of 1850, *supra*; Convention with Brunswick and Luneburg, 11 Stat. 601; Treaty of Amity, Commerce, and Consular Privileges between the United States and the Republic of Salvador, 1870, 18 Stat. 725, 730; Treaty of Friendship, Commerce and Navigation between the United States of America and the Republic of Peru, 1870, 18 Stat. 698, 703.

CONCLUSION

For the reasons stated, it is respectfully submitted that the petition for a writ of certiorari should be granted.

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SEPTEMBER 1960.

APPENDICES

APPENDIX A

STATUTES AND TREATIES INVOLVED

1. Section 111.070 of the Oregon Revised Statutes provides as follows:

(1) The right of an alien not residing within the United States or its territories to take either real or personal property or the proceeds thereof in this state by succession or testamentary disposition, upon the same terms and conditions as inhabitants and citizens of the United States, is dependent in each case:

(a) Upon the existence of a reciprocal right upon the part of citizens of the United States to take real and personal property and the proceeds thereof upon the same terms and conditions as inhabitants and citizens of the country of which such alien is an inhabitant or citizen;

(b) Upon the rights of citizens of the United States to receive by payment to them within the United States or its territories money originating from the estates of persons dying within such foreign country; and

(c) Upon proof that such foreign heirs, distributees, devisees or legatees may receive the benefit, use or control of money or property from estates of persons dying in this state without confiscation, in whole or in part, by the governments of such foreign countries.

(2) The burden is upon such nonresident alien to establish the fact of existence of the reciprocal rights set forth in subsection (1) of this section.

(3) If such reciprocal rights are not found to

exist and if no heir, devisee or legatee other than such alien is found eligible to take such property, the property shall be disposed of as escheated property.

2. Article 8 of the Yugoslav laws regulating payment transactions with foreign countries provides as follows (Law To Regulate Payments to and From Foreign Countries (Foreign Exchange Law) (Official Gazette of the Federal People's Republic of Yugoslavia, Friday, October 25, 1946, Belgrade, No. 86, Year II)):

Foreign exchange regulations are understood to include provisions of this Law; provisions of regulations for the implementation of this Law; orders, instructions and rulings of the Minister of Finance of the FPRY issued pursuant to this Law; all regulations for the control of imports and exports issued by the Minister of Foreign Trade of the FPRY; and all such provisions of agreements with foreign countries as relate to payments.

3. The relevant provisions of the Treaty Between the United States of America and Serbia, For Facilitating and Developing Commercial Relations of 1881, 22 Stat. 963, 2 Malloy, Treaties 1613, are as follows:

A PROCLAMATION

Whereas, a Treaty between the United States of America and His Highness the Prince of Serbia, for facilitating and developing the commercial relations established between the two countries, was concluded and signed at Belgrade by their respective plenipotentiaries on the 2/14 day of October, 1881, the original of which treaty, being in the English and Serbian languages, is word for word as follows:

Treaty of Commerce Between the United States of America and Serbia.

The United States of America and His Highness the Prince of Serbia, animated by the desire of facilitating and developing the commercial relations established between the two countries, have determined with this object to conclude a treaty, and have named * * * their respective plenipotentiaries * * *

Who * * * have agreed upon and concluded the following articles:

Article I.

There shall be reciprocally full and entire liberty of commerce and navigation between the citizens and subjects of the two high contracting powers, who shall be at liberty to establish themselves freely in each other's territory.

Article II.

In all that concerns the right of acquiring, possessing or disposing of every kind of property, real or personal, citizens of the United States in Serbia and Serbian subjects in the United States, shall enjoy the right which the respective laws grant or shall grant in each of these states to the subjects of the most favored nation.

Within these limits, and under the same conditions as the subjects of the most favored nation, they shall be at liberty to acquire and dispose of such property, whether by purchase, sale, donation, exchange, marriage contract, testament, inheritance, or in any other manner whatsoever, without being subject to any taxes, imposts or charges.

whatever, other or higher than those which are or shall be levied on natives or on the subjects of the most favored state.

They shall likewise be at liberty to export freely the proceeds of the sale of their property, and their goods in general, without being subjected to pay any other or higher duties than those payable under similar circumstances by natives or by the subjects of the most favored state.

4. The relevant provisions of the International Monetary Fund Agreement, 60 Stat. 1401, 1403, T.I.A.S. 1501, are as follows:

Article IV.

PAR VALUE OF CURRENCIES

Section 1. *Expression of par values.*

* * * * *

Section 2. *Gold purchases based on par values*

* * * * *

Section 3. *Foreign exchange dealings based on parity.*

The maximum and the minimum rates for exchange transactions between the currencies of members taking place within their territories shall not differ from parity.

- (i) in the case of spot exchange transactions, by more than one percent; and
- (ii) in the case of other exchange transactions, by a margin which exceeds the margin for spot exchange transactions by more than the Fund considers reasonable.

Section 4. *Obligations regarding exchange stability.*

- (a) Each member undertakes to collaborate

with the Fund to promote exchange stability, to maintain orderly exchange arrangements with other members, and to avoid competitive exchange alterations.

(b) Each member undertakes, through appropriate measures consistent with this Agreement, to permit within its territories exchange transactions between its currency and the currencies of other members only within the limits prescribed under Section 3 of this Article. * * *

* * * * *

Article VI.

CAPITAL TRANSFERS

Section 1. *Use of the Fund's resources for capital transfers*

(a) A member may not make net use of the Fund's resources to meet a large or sustained outflow of capital, and the Fund may request a member to exercise controls to prevent such use of the resources of the Fund. If, after receiving such a request, a member fails to exercise appropriate controls, the Fund may declare the member ineligible to use the resources of the Fund.

* * * * *

Section 2. *Special provisions for capital transfers*

* * * * *

Section 3. *Controls of capital transfers*

Members may exercise such controls as are necessary to regulate international capital movements, but no member may exercise these controls in a manner which will restrict payments for current transactions or which will unduly delay transfers

of funds in settlement of commitments, except as provided in Article VII, Section 3(b), and in Article XIV, Section 2.

* * * * *

Article VIII.

GENERAL OBLIGATIONS OF MEMBERS

Section 1. *Introduction*

In addition to the obligations assumed under other articles of this Agreement, each member undertakes the obligations set out in this Article.

Section 2. *Avoidance of restrictions on current payments*

(a) Subject to the provisions of Article VII, Section 3(b), and Article XIV, Section 2, no member shall, without the approval of the Fund, impose restrictions on the making of payments and transfers for current international transactions.

(b) Exchange contracts which involve the currency of any member and which are contrary to the exchange control regulations of that member maintained or imposed consistently with this Agreement shall be unenforceable in the territories of any member. In addition, members may, by mutual accord, co-operate in measures for the purpose of making the exchange control regulations of either member more effective, provided that such measures and regulations are consistent with this Agreement.

APPENDIX B

DIPLOMATIC CORRESPONDENCE

From the Department of State to the Yugoslav Embassy, December 26, 1957:

The Department of State acknowledges receipt of Note No. 4693, dated November 4, 1957, from the Embassy of Yugoslavia; regarding difficulties currently being encountered in some States in the United States by citizens of Yugoslavia, heirs, next-of-kin, devisees and legatees of deceased residents of the United States, in being recognized as such in some States in the United States which require proof of reciprocity.

The Embassy states that citizens of the United States have full rights of inheritance to property in Yugoslavia, both real and personal, and that the Government of Yugoslavia is unaware of any instance in which an American citizen entitled to inherit property in Yugoslavia has been denied the right to such inheritance or has, upon application therefor, been denied the right to the transfer of his inheritance, or the proceeds of the sale thereof, to the United States in dollars. However, certain State authorities have indicated some doubt as to whether in practice such rights of inheritance have been recognized, and have rejected as inconclusive the tendered proof of numerous instances of the inheritance by American citizens of property in Yugoslavia.

The Embassy therefore asks to be advised if there has been brought to the attention of the Department of State any instance or alleged instance in which an American citizen entitled to the inheritance of property in Yugoslavia as heir, next-of-kin, devisee or legatee of a decedent has been denied the right to such inheritance or has, upon application therefor, been

denied the right to the transfer of his inheritance, or the proceeds of the sale thereof, to the United States in dollars.

The Department assumes that the Embassy's inquiry relates only to cases in which the claimant was an American citizen on the date of the death of the decedent.

The Department of State does not have complete and up-to-date information regarding all claims of American citizens to share in estates in Yugoslavia or the action taken by the appropriate Yugoslav authorities on every application by an American citizen to transfer the proceeds of his shares of an estate in dollars to the United States. Such matters are ordinarily handled in Yugoslavia, as in other countries, by the heir or devisee personally or by a legal representative acting on his behalf.

Numerous inquiries are, of course, addressed to the Department or to American diplomatic and consular officers stationed in the country in which the estate is being administered or in which the property is located requesting advice and assistance. The Department is normally informed of later developments in the case only when the American citizen concerned believes he is in danger of being denied the share of an estate alleged to be rightfully his, or when he believes he is encountering unwarranted difficulties or undue delay in effecting the transfer to the United States of the proceeds of his share of an estate.

In the light of the foregoing, the Embassy is informed that the Department has not been apprised of any instance where an American citizen has not been permitted to inherit or succeed by will or otherwise to property from an estate in Yugoslavia, or, after having duly made application therefor, has not been granted

permission to transfer his inheritance or the proceeds of the sale thereof to the United States in dollars.

Department of State, Washington.

December 26, 1957.

S/S CR.

From the Yugoslav Embassy to the Department of State, November 4, 1957:

No. 4693

The Embassy of Yugoslavia presents its compliments to the Department of State and has the honor to inform the Department that citizens of Yugoslavia, heirs, next-of-kin, devisees and legatees of deceased residents of the United States, continue in some States to meet with difficulties in being recognized as such. This appears to be due to the requirement of such States of proof of reciprocity in such matters. Although under the law of Yugoslavia, competent and conclusive evidence of which has been furnished to the appropriate executive and judicial authorities in such States, citizens of the United States have full rights of inheritance to property in Yugoslavia, both real and personal, by intestacy or as beneficiaries under a will, some doubt has been indicated by certain of such authorities as to whether in practice such rights have been recognized. In such circumstances, proof of numerous instances of the inheritance by American citizens of property in Yugoslavia and of the formal recognition thereof by the competent Yugoslav authorities, has been tendered to such authorities, but has been rejected as inconclusive. The Government of Yugoslavia is unaware of any instance in which an American citizen entitled to the inheritance of property in Yugoslavia as heir, next-of-kin, devisee or legatee of a decedent has been denied the right to such inheritance. Accord-

ingly, it will be appreciated if the Department of State would advise the Embassy whether or not any such instance, or alleged instance, has been brought to the Department's attention.

The Government of Yugoslavia has always recognized the right of an American citizen to have his funds derived from inheritance in Yugoslavia transferred to him in the United States in Dollars, the legal basis for this right having been stated in the Embassy's note No. 4135 dated March 27, 1957. The Government of Yugoslavia is also unaware of any instance in which an American citizen, an heir or an [sic] beneficiary of a decedent [sic] estate in Yugoslavia, has, upon application therefor, been denied the right to the transfer of his inheritance or the proceeds of the sale thereof, to the United States in Dollars. Since, however, some doubt has been expressed by certain authorities in some States as to whether the regulations, policy and procedures described in the Embassy's note under reference have been followed in practice, it would be appreciated if the Department would advise the Embassy whether or not there has been brought to the attention of the Department any instance or alleged instance in which an American beneficiary of a decedent [sic] estate in Yugoslavia has, upon application therefor, been denied the right to the transfer of his inheritance, or proceeds of the sale thereof, to the United States in Dollars.

If any report of any instance or alleged instance in either of the categories described above has come to the Department's attention, in order that the competent authorities in Yugoslavia may investigate the same and ascertain the facts, it is requested that the Embassy be informed to the fullest extent possible as to each such instance of all relevant particulars, including (1) the name and address of the American citizen involved, (2) the name and address, and the date and place of

death of the Yugoslav decedent [sic] whose estate was involved, (3) the Yugoslav court in which such estate was probated, and (4) in the case of instances in the latter category, the Yugoslav agency to which application for transfer is said to have been made, and when.

The Embassy avails itself of this opportunity to renew to the Department of State the assurance of its highest consideration:

Washington, D. C., November 4th, 1957.

Department of State, Washington, D. C.

From the Secretary of State to the Yugoslav Embassy,
April 24, 1958:

The Secretary of State presents his compliments to the Charge d'Affaires ad interim of the Federal People's Republic of Yugoslavia and acknowledges the receipt of the Embassy's note No. 4298 of April 18, 1958, regarding the interpretation of Article II of the Convention for Facilitating and Developing Commercial Relations (sometimes called the Convention of Commerce and Navigation), concluded on October 2/14, 1881 between the United States of America and Serbia and presently in force between the United States of America and Yugoslavia. (22 Statutes at Large 963, Treaty Series 319.)

According to the Embassy's note, the Government of Yugoslavia considers that, by virtue of Article II of the 1881 Convention, citizens of the United States are entitled to most-favored-nation treatment with respect to the acquisition, possession, or disposition of property in Yugoslavia whether they reside in Yugoslavia or elsewhere and, in the case of inheritance, regardless of the decedent's nationality. With particular reference to inheritance, the Embassy states that,

in accordance with this construction of Article II of the 1881 Convention, United States citizens, regardless of their residence or of the decedent's nationality, are entitled to and do actually enjoy the same rights as Yugoslav nationals with respect to the inheritance of property in Yugoslavia. This, as the note points out, is in consequence of the fact that United States citizens, wherever resident, are accorded in Yugoslavia treatment no less favorable than that accorded in Yugoslavia to nationals of Poland under Article 23 of the Treaty Regarding Legal Relations concluded on May 4, 1923 between Yugoslavia and Poland, whereby Polish nationals, irrespective of their residence, are accorded national treatment (that is, the same treatment as Yugoslav nationals) in regard to the succession to and possession of property in Yugoslavia.

The Embassy's note cites Article IX of the Treaty of Friendship, Commerce and Navigation of July 27, 1853 between the United States of America and Argentina, which contains a national-treatment provision similar in substance to the provision in Article 23 of the 1923 treaty between Yugoslavia and Poland. The note indicates that, by the application of such provision together with the most-favored-nation provision in Article II of the 1881 Convention, Yugoslav nationals are entitled to and should be accorded, whether they reside in the United States or elsewhere and regardless of the decedent's nationality, the right to acquire, possess, or dispose of property in the United States.

The Embassy's note further states that the Yugoslav Government, pursuant to the third paragraph of Article II of the 1881 Convention, accords to American citizens, wherever they reside, the right to withdraw and have transferred to them moneys due them by inheritance from decedents' estates located in Yugoslavia or moneys derived from the sale of inherited property in Yugoslavia.

The Embassy's note called attention to the agreement of July 19, 1948 between the United States of America and Yugoslavia regarding the settlement of pecuniary claims against Yugoslavia, and particularly to Article 5 of that agreement which has the effect of confirming that Article II of the 1881 Convention is interpreted as according rights in regard to property in one or the other of the two countries irrespective of the place of residence of the nationals concerned or of the decedent's nationality.

The Embassy's note inquired whether the United States Government concurs with the Yugoslav Government's interpretation of Article II of the 1881 Convention, particularly as applied to the rights of Yugoslav nationals who do not reside in the United States. It appears that the Embassy's inquiry is prompted by indications that some State attorneys general in the United States are tending toward the adoption of a contrary view. The note refers to a statement by the Supreme Court of California in the case of *In re Arbulich's Estate*, 41 Cal. 2d 86, 257 P. 2d 433, certiorari denied, 346 U.S. 897 (1953).

It is well to bear in mind a general principle applied in the United States, namely, that although an expression of opinion by the Department of State with respect to the interpretation of a treaty provision will normally be given considerable weight by the courts, such an expression of opinion is not binding on the courts.

The Department of State concurs in the Yugoslav interpretation of Article II of the 1881 Convention. That is to say, it is the opinion of the Department that Article II provides that whatever right is accorded in this country to nationals of any third country, wherever resident, with respect to the acquisition, possession, or disposition of property (including the rights of inheritance and transfer of proceeds thereof), shall be accorded likewise in this country to Yugoslav nationals

wherever resident and irrespective of the decedent's nationality. The Embassy's citation of the 1853 treaty between the United States of America and Argentina in connection with this matter appears to be appropriate.

Article II of the 1881 Convention is quoted in the Embassy's note, so it will not be set forth here. The critical words "citizens of the United States in Serbia and Serbian subjects in the United States shall enjoy [certain rights]" as they appear in the first paragraph of Article II may be given at least two plausible interpretations, namely: (1) The words "in Serbia" and "in the United States" may be deemed adjectival, modifying respectively "citizens of the United States" and "Serbian subjects". (2) The words "in Serbia" and "in the United States" may be deemed adverbial, modifying "shall enjoy". The first of these interpretations would limit the application of the article to the rights of nationals of the one country present in the other. However, a literal reading of the pertinent phraseology in context does not require such a restrictive interpretation. Rather, a liberal interpretation of the ambiguous portion produces a reasonable construction consonant with the spirit of the Treaty as a whole.

Under the first, or restrictive interpretation, an American citizen residing in Yugoslavia would be accorded under the most-favored-nation provision whatever rights in respect of the acquisition, possession, or disposition of property in Yugoslavia were accorded to nationals of a third country (for example, Poland under the 1923 treaty which the note cites) who were resident therein. However, American citizens outside Yugoslavia would not be accorded rights similar to rights under Yugoslav law enjoyed by Polish nationals who were not resident therein.

A review of the negotiating history of the 1881 Convention discloses nothing which supports the theory that the Governments of the United States and Serbia intended to provide that only some and not all of the nationals of the respective countries would be entitled to most-favored-nation treatment with respect to the acquisition, possession, and disposition of property. In this connection, it appears to have been the consistent policy of the United States, as reflected in treaties concluded between 1850 and 1890, to accord rights of inheritance and succession to property to nationals of the other contracting party without regard to their residence at the time of the decedent's death.

As stated in the preamble thereto, the 1881 Convention was entered into for the purpose of "facilitating and developing the commercial relations established between the two countries". The restrictive view would probably produce results inconsistent with this purpose. For example, a national of one country, also resident therein, wishing to make an *inter vivos* disposition of property belonging to him and located in the other country would have been required to make the long and then arduous trip to the other country to effect the disposition. It seems equally inconsistent with the expressed purpose of the Convention to make an alien's rights of inheritance turn on his location at the time of decedent's death.

Therefore, in the absence of clear and unmistakable evidence of a contrary intention on the part of the negotiators, it appears that the interpretation most consistent with the purpose of the Convention, and with the policy reflected in treaties between the United States of America and other countries, is to interpret the words "in Serbia" and "in the United States" as referring to the place where property rights are granted rather than to the geographical location of the person claiming such rights. As thus construed,

the provision would accord to nationals of either party *wherever resident* rights similar to those enjoyed by nationals of the most-favored-nation *wherever resident*. A review of all relevant correspondence available at the National Archives indicates no intention contrary to this interpretation. As the Supreme Court has said:

"Treaties are to be construed in a broad and liberal spirit, and, when two constructions are possible, one restrictive of rights that may be claimed under it and the other favorable to them, the latter is to be preferred. *Hauenstein v. Lynham*, 100 U.S. 483, 487; *Geofroy v. Riggs*, *supra*, 271; *Tucker v. Alexandroff*, 183 U.S. 424, 437." *Asakura v. Seattle*, 265 U.S. 332, 342 (1924).

This note, of course, is not to be considered as having the character of an international agreement or as effecting any modification of the treaty.

Department of State, Washington, April 24, 1958.
211.683/4-1858

From the Ambassador of Yugoslavia to the Secretary of State, April 18, 1958:

No. 4298

The Ambassador of the Federal People's Republic of Yugoslavia presents his compliments to the Honorable the Secretary of State and, in accordance with talks held between representatives of the Yugoslav Embassy and representatives of the Department of State, has the honor to inform the Honorable the Secretary of State that in the United States there have in the post-war period been various interpretations of Article II of the "Convention for Facilitating and Developing Commercial Relations" concluded between Serbia and the United States on October 2/14, 1881, (also com-

monly called the Convention of Commerce and Navigation of 1881, Treaty Series 319, 22 Stat. 936, 2 Malloy's Treaties, ect. [*sic*] 1613). The governments of the Federal People's Republic of Yugoslavia and of the United States of America recognize that this Convention has at all times been and is now in force between Yugoslavia and the United States. Article II of the Convention reads in the English text as follows:

"In all that concerns the right of acquiring, or possessing or disposing of every kind of property, real or personal, citizens of the United States in Serbia and Serbian Subjects in the United States, shall enjoy the rights which the respective laws grant or shall grant in each of these states to the subjects of the most favoured nation."

"Within these limits, and under the same conditions as the subjects of the most favoured nation, they shall be at liberty to acquire and dispose of such property, whether by purchase, sale, donation, exchange, marriage contract, testament, inheritance, or in any other manner whatever, without being subject to any taxes, imposts or charges whatever, other or higher than those which are or shall be levied on natives or on the subjects of the most favoured nation."

"They shall likewise be at liberty to export freely the proceeds of the sale of their property and their goods in general, without being subjected to pay any other or higher duties than those payable under similar circumstances by natives or by the subjects of the most favoured state."

In the period since 1945 there have been cases in which Article II of the Convention of Commerce and Navigation of 1881, when applied in the United States, was interpreted as if it did not sufficiently bear out

reciprocal rights of inheritance between the citizens of the Federal People's Republic of Yugoslavia and the citizens of the United States of America. According to the interpretations (particularly a statement by the Supreme Court of California in the case *In re Arbalich Estate*, 41 Cal. 2d 86, 257 P. 2d 433 and statements of some State attorneys general), the provisions of the Convention allegedly cannot be applied to those decedents' estates, the decedent of which is an American citizen who has left property in the United States to a Yugoslav citizen residing in Yugoslavia. According to such an interpretation, the acquisition of property by inheritance, pursuant to the provision of the most-favoured-nation clause in Article II of the Convention, encompasses only those citizens of Yugoslavia actually and physically living, sojourning or residing within the borders of the United States regardless of the decedent's citizenship. On the other hand, according to such an interpretation, the Yugoslav citizens permanently residing within the borders of Yugoslavia cannot inherit property left them by a resident of the United States, although the heirs are in most cases the closest relatives of the decedent's—his parents, spouse, children, brothers, sisters, etc. And vice versa, the corresponding should, then, apply as regards the inheritance rights of American citizens in Yugoslavia.

Such an interpretation, however, is directly contrary to the past and present interpretation of the Yugoslav courts and authorities, who always have been applying the provisions of Article II of the Convention so that by virtue thereof the American citizens are entitled to acquire property by inheritance, testamentary disposition or intestate succession, or by transfer, regardless of whether they are permanently residing in the United States of America, or anywhere else, as well as regardless of whether the decedent is a citizen of Yugoslavia,

the United States or any third country. This can be clearly deduced from many a decision of the Yugoslav courts, who have been applying and interpreting Article II of the Convention exclusively in the above sense.

In Article 23 of the Convention of Legal Relations between Yugoslavia and Poland, concluded on May 4, 1923, (85 League of Nations Treaty Series 455) the two contracting parties extended rights of inheritance to the nationals of the other as follows:

“The nationals of either Contracting Party shall be allowed, on the same conditions as nationals of the country to succeed or to take possession of property passing to them in the territory of the other Contracting Party by operation of law or in virtue of testamentary disposition.”

It is the construction of the Yugoslav Government that under the most-favoured-nation clause of Article II of the Convention of 1881 citizens of the United States, regardless of their whereabouts or residence have had extended to them and are entitled to enjoy the same rights of inheritance from decedents' estates and of property located in Yugoslavia as nationals of Yugoslavia themselves, and regardless of whether the decedent was a citizen of Yugoslavia, the United States of America or any third country.

As regards the application of the most-favoured-nation clause to the rights of the Yugoslav citizens, regardless of their permanent residence, to acquire property and to inherit estates in the United States, it is clearly explained for example, by Article IX of the Treaty of Friendship, Commerce and Navigation between the United States and Argentina, signed at San Jose on July 27, 1853 (10 Stat./Pt. 2, Public Treaties 16 Treaty Series 4, I Treaties /Malloy/ 20);

“In whatever relates to the police of the ports, the lading and unlading of ships, the safety of the

merchandise, goods and effects, and to the acquiring and disposing of property of every sort and denomination, either by sale, donation, exchange, testament or in any other manner whatsoever, as also to the administration of justice, the citizens of the two contracting parties shall reciprocally enjoy the same privileges, liberties and rights, as native citizens: and they shall not be charged, in any of these respects with any higher imposts or duties than those which are paid or may be paid, by native citizens, submitting, of course, to the local laws, and regulations of each country respectively. If any citizen of either of the two contracting parties shall die without will or testament, in any of the territories of the other, the Consul-General or Consul of the nation to which the deceased belonged, or the representative of such Consul-General or Consul, in the absence, shall have the right to intervene in the possession, administration and judicial liquidation of the estate of the deceased, conformably with the laws of the country, for the benefit of the creditors and legal heirs."

This treaty unequivocally grants Argentine citizens the same rights of inheritance as native citizens in the United States, in the same manner as the right is granted to the Yugoslav citizens by the treaty between Poland and Yugoslavia. It will be observed that in substance the 1853 treaty with Argentina is very similar to the 1923 treaty between Poland and Yugoslavia.

It is further the construction of the Yugoslav Government that by virtue of the most-favored-nation clause and the third [sic] subparagraph of Article II of the Convention of 1881, American citizens, wherever they may physically be or permanently reside, have and

must be accorded the right to withdraw and export, i.e. have transferred to them upon request to the United States or wherever they may direct, moneys due them by inheritance from decedents' estates located in Yugoslavia or moneys derived from the sale of inherited property in Yugoslavia.

The interpretation of the Yugoslav Government is also based on the spirit and intentions stated in the preamble to the Convention of Commerce and Navigation of 1881, as well as on the basis of the needs resulting from the relations which prevailed at that time between the two countries.

It is apparent, therefore, that the construction of the treaty adopted by the Supreme Court of California in *In Re Arbulich Estate* is not in accord with the understanding of the Yugoslav Government concerning the meaning and the effect of Article II of the Convention of 1881. This construction requires that there be twice read into the language the word "residing" or at least the word "sojourning" so the clause could read "citizens of the United States residing (or sojourning) in Serbia and Serbian citizens residing (or sojourning) in the United States". It requires no addition of words in the treaty to rephrase from Victorian into modern English what was beyond doubt the intention of the treaty-makers as to the persons to be covered by the treaty.

Article 5 of the "Agreement Between the Government of the United States of America and the Federal People's Republic of Yugoslavia Regarding Pecuniary Claims of the United States and its Citizens", concluded on July 19, 1948, (Treaty Series No. 1803, 72 Stat. 2133) provides as follows:

"The Government of Yugoslavia agrees to accord to nationals of the United States lawfully continuing to hold, or, hereafter acquiring assets

in Yugoslavia, the rights and privileges of using and administering such assets and the income therefrom within the framework of the controls and regulations of the Government of Yugoslavia, on conditions not less favourable than the rights and privileges accorded to nationals of Yugoslavia or of any other country, in accordance with the Convention of Commerce and Navigation between the United States of America and the Prince of Serbia, signed at Belgrade, October 2/14, 1881."

It is evident that both Parties have confirmed thereby that Article II of the Convention of 1881 is to be interpreted to the effect that the citizens of one contracting party shall have the most-favoured-nation treatment when acquiring property in the territory of the other, regardless of the heir's residence or the decedent's citizenship. This joint interpretation (reached by both contracting parties) confirms the already reached concurrence on the existence of the rights of American citizens in Yugoslavia (and accordingly of the Yugoslav citizens in the United States of America) to acquire property (and accordingly to inherit) by virtue of Article II of the Convention of 1881, regardless of the heir's residence and the decedent's citizenship.

The Commission for Interpreting of Laws of the National Assembly of the Federal People's Republic of Yugoslavia issued on August 3, 1953, and the National Assembly subsequently confirmed, a binding interpretation, as follows:

"According to Article 5 of the Agreement between the Government of the United States of America and the Federal People's Republic of Yugoslavia regarding Pecuniary Claims of the United States of America and its Citizens, con-

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IN THE
Supreme Court of the United States

OCTOBER TERM, 1960

No. 102

ANDJA KOLOVRAT, DRAGO STOJIC, DRAGICA SUNJIC, NEDA
TURK, JOSIP BULGAN, JURE ZIVANOVIC, MARA TOLIC
and MILAN STOJIC, and also BRANKO KARADZOLE,
Consul General of Yugoslavia at San Francisco,
California, *Petitioners*,

v.

STATE OF OREGON, acting by and through the State Land
Board, *Respondent*.

LETVO ZEKIC, IBRO ZEKIC, HABIBA TERKOVIC, DZEDJA
POPOVAC, SEFKO MURADBASIC, DIKA MURADBASIC,
MURTA BEKIC, MILKA ZEKIC, JASMINA ZEKIC and
RAJKA ZEKIC, and BRANKO KARADZOLE, Consul
General of Yugoslavia at San Francisco, Califor-
nia, *Petitioners*,

v.

STATE OF OREGON, acting by and through the State Land
Board, *Respondent*.

On Writ of Certiorari to the Supreme Court of the State of Oregon

BRIEF FOR THE PETITIONERS

LAWRENCE S. LESSER
1625 K Street, N. W.
Washington 6, D. C.

PETER A. SCHWABE
216 Pacific Building
Portland, Oregon

Counsel for the Petitioners

cluded on July 19, 1948, and the provisions of Article II of the Convention of Commerce and Navigation between Serbia and the United States of America, concluded on October 2/14, 1881, which is still in force; citizens of the United States of America are equal with citizens of the Federal People's Republic of Yugoslavia in regard to the manner and object of acquiring and disposing of both personal and real property. Accordingly, they have the right to inherit real property in the territory of the Federal People's Republic of Yugoslavia under the same conditions as citizens of the Federal People's Republic of Yugoslavia on the basis of the law, as well as on the basis of a Testament, regardless of the provision of Article 5, paragraph 1 of the Decree regarding the Control of Transfers of Real Property, of March 20, 1948."

In the note of the Secretariat of State for Foreign Affairs of Yugoslavia No. 515370/53 of October 21, 1953, to the American Embassy in Belgrade, in response to the American Embassy's note No. 1368 of May 21, 1953, unqualified assurances were given by the Yugoslav Government that it considers citizens of the United States, regardless of their whereabouts or residence, to have full reciprocal rights of inheritance in decedent's estates located in Yugoslavia on the basis of Article II of the Convention between Serbia and the United States of 1881, as confirmed by Article 5 of the Agreement on Pecuniary Claims of the United States and its Citizens, concluded on July 19, 1948.

The Attorneys General of both Oregon and California, which enacted the so-called reciprocal inheritance rights statutes in the years 1937 and 1941 respectively, issued opinions that reciprocal inheritance rights existed between Yugoslavia and the United States in the same manner required by their statutes by virtue

of Article II of the Convention between Serbia and the United States of 1881. The opinion of the Honorable I. H. Van Winkle, Attorney General of Oregon is in the 1938-1940 volume of the Opinions of the Attorneys General at page 136, that of the Honorable Earl Warren, Attorney General of California, is No. 1 NS 4451 dated July 15, 1942, from which the following is quoted:

"Class 2. Where the same or reciprocal rights in the matter of acquiring and holding all kinds of property in any manner whatsoever are not granted to the citizens of the respective parties to the treaty in those specific words, but are in effect so granted by conferring such rights upon those citizens which the respective laws grant or shall grant in each of the states to the subjects of the most-favoured-nation, and under the same conditions as subjects of the most-favoured-nation."

"In the class is Yugoslavia (the Treaty applying also to Serbia and the Kingdom of the Serbs, Croats and Slovenes) the citizens of which are entitled, by virtue of the reference provisions of such Treaty, to the same rights as those enjoyed by the citizens of Argentina."

In substantiation of the fact that Yugoslavia has always meticulously performed and carried out the obligations which, under its construction of the Convention, are due American citizens heirs or beneficiaries of estates and property in Yugoslavia, reference may be made to the Department's note of December 26, 1957, in response to this Embassy's note of November 4, 1957, No. 4693, wherein the Department stated:

"In the light of the foregoing, the Embassy is informed that the Department has not been ap-

prised of any instance where an American citizen has not been permitted to inherit or succeed by will or otherwise to property from an estate in Yugoslavia, or, after having duly made application therefor, has not been granted permission to transfer his inheritance of the proceeds of sale thereof to the United States in dollars."

In view of the foregoing, the Government of the Federal People's Republic of Yugoslavia would appreciate being advised of the opinion of the Government of the United States on the following:

Whether it concurs with the construction of the Yugoslav Government that it was the treaty-making intention of both contracting parties in negotiating and concluding Article II of the Convention for Facilitating and Developing Commercial Relations of 1881 and Article 5 of the Agreement between the Government of the United States of America and the Federal People's Republic of Yugoslavia regarding Pecuniary Claims of the United States and its Citizens of 1948 to safeguard the inheritance rights of American Citizens and to ensure the transfer of the proceeds accruing thereof regardless of their permanent residence, encompassing therefore also those American citizens residing in the United States, and reversely, whether it concurs with the construction of the Yugoslav Government that it was the treaty-making intention of both contracting parties in negotiating and concluding Article II of the Convention of 1881 and Article 5 of the Agreement of 1948, to safeguard the inheritance rights of Yugoslav citizens and to ensure the transfer of the proceeds accruing thereof, regardless of their permanent residence, encompassing therefore also those residing in Yugoslavia?

The Yugoslav Ambassador avails himself of this op-

portunity to renew to the Honorable the Secretary of State the assurances of his highest consideration.

Washington, D. C., April 18, 1958.

From the Ambassador of Yugoslavia to the Secretary of State, April 7, 1960:

No. 4306/60

The Ambassador of the Federal People's Republic of Yugoslavia presents his compliments to the Honorable the Secretary of State and has the honor to refer to their previous exchange of communications, No. 4298 of April 18, 1958, and No. 211.683/4-1858 of April 24, 1958, respectively, concerning the construction and meaning of Article II of the Convention of Commerce and Navigation concluded October 2/14, 1881, in force and effect between the United States and Yugoslavia. In consequence of the identity of the views expressed in such exchange of communications, the Ambassador considers it appropriate to draw the attention of the Secretary of State to the recent decision of the Supreme Court of the State of Oregon in the cases of *State Land Board v. Kolovrat* and *State Land Board v. Zekic*, 349 P.(2d) 255, rehearing denied March 2, 1960, wherein the provision of the Convention under reference was given a meaning and construction widely at variance with such views, and in express disregard thereof. The Court denied the right under such Convention of citizens and residents of Yugoslavia to inherit property in Oregon, and in the absence of other heirs, decreed such property to be escheated to the State.

In the circumstances, it is intended to apply as promptly as practicable, on behalf of the Yugoslav heirs, to the Supreme Court of the United States for a writ of certiorari to the Supreme Court of the State.

of Oregon, and the Secretary of State may wish to consider whether it would not be appropriate for the United States at the proper time to seek leave of the Supreme Court of the United States to file, as amicus curiae, a brief or other expression of its views, in support of such petition. The Government of Yugoslavia, no less than the Yugoslav heirs concerned, would welcome such action on the part of the United States because of the effect that the decision of the Supreme Court of the State of Oregon, if not reversed, may have on pending cases, and others that undoubtedly will arise in the future, not only in Oregon, but in other States, including, but not necessarily limited to, California, Montana, Arizona, Nevada, Iowa and Louisiana.

In view of the effect that the said decision may have on the mutual relations under the Convention of Commerce and Navigation of 1881 as well, the Yugoslav Ambassador would greatly appreciate it if the Honorable the Secretary of State would advise him of His views in the premises at His early convenience.

The Ambassador of the Federal People's Republic of Yugoslavia avails himself of this opportunity to renew to the Honorable the Secretary of State the assurances of his highest consideration.

Washington, D. C., April 7, 1960.

The Honorable, The Secretary of State, Washington, D. C.

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IN THE
Supreme Court of the United States

OCTOBER TERM, 1960

No. 102

ANDJA KOLOVRAT, DRAGO STOJIC, DRAGICA SUNJIC, NEDA
TURK, JOSIP BULGAN, JURE ZIVANOVIC, MARA TOLIC
and MILAN STOJIC, and also BRANKO KARADZOLE,
Consul General of Yugoslavia at San Francisco,
California, *Petitioners*,

v.

STATE OF OREGON, acting by and through the State Land
Board, *Respondent*.

LUTVO ZEKIC, IBRO ZEKIC, HABIBA TURKOVIC, DZEDJA
POPOVAC, SEFKO MURADBASIC, DIKA MURADBASIC,
MURTA BRKIC, MILKA ZEKIC, JASMINA ZEKIC and
RAJKA ZEKIC, and BRANKO KARADZOLE, Consul
General of Yugoslavia at San Francisco, Califor-
nia, *Petitioners*,

v.

STATE OF OREGON, acting by and through the State Land
Board, *Respondent*.

On Writ of Certiorari to the Supreme Court of the State of Oregon

BRIEF FOR THE PETITIONERS

OPINIONS BELOW

The opinion of the Supreme Court of the State of
Oregon, R 82, is reported at 349 P.2d 255. The Cir-

cuit Court of the State of Oregon for the County of Multnomah rendered no opinion.

JURISDICTION

The decrees of the Supreme Court of the State of Oregon, R 105-6, reversing the orders of the Circuit Court of the State of Oregon for the County of Multnomah, R 76, 79, are dated and were entered January 13, 1960. The petitioners' timely petition for rehearing was denied by order dated and entered March 1, 1960. R 105. The Petition for a writ of certiorari was filed on May 26, 1960, and was granted on October 10, 1960. U.S. 81 S.Ct. 44, R 107. The jurisdiction of this Court rests on Tit. 28 U.S.C. Sec. 1257(3).

QUESTIONS PRESENTED

1. Whether Article II of the Convention for Facilitating and Developing Commercial Relations of 1881, concluded between the United States and Serbia, and in force and effect between the United States and Yugoslavia, 22 Stat. 963, in granting to the citizens of each country the right, among others enjoyed by citizens of the most favored nation, to acquire by inheritance, or otherwise, property located within the territory of the other, grants such right to citizens of one country who are not within the territory of the other.

2. Whether notwithstanding the adherence of both the United States and Yugoslavia to the Articles of Agreement of the International Monetary Fund, 60 Stat. 1401, a State of the United States may deprive citizens and residents of Yugoslavia of rights of inheritance which they would otherwise have under its laws, solely by reason of the existence in Yugoslavia of foreign exchange controls imposed or maintained consistently with such Agreement.

TREATIES AND STATUTES INVOLVED

The treaty provisions involved are those of Article II of the Convention for Facilitating and Developing Commercial Relations (sometimes called the Convention of Commerce and Navigation) concluded between the United States and Serbia on October 2/14, 1881, 22 Stat. 963; Tr. Ser. 319; 2 Malloy, *Treaties, etc.*, 1613; R 54-57; App. A, pp. 1a-2a, *infra*.¹ Also involved are the provisions of Article VI, § 3, Article VIII, § 2(b), and Article XIV, §§ 2 and 4, of the Articles of Agreement of the International Monetary Fund, concluded on December 27, 1945, 60 Stat. 1401, T.I.A.S. 1501, to which both the United States and Yugoslavia are signatories.² R 57-63, App. B, pp. 3a-6a, *infra*. The statutory provisions involved are those of § 111.070, Oregon Revised Statutes. R 83-4, App. C, pp. 6a-7a, *infra*.

STATEMENT

Joe Stoich and Muharem Zekich died intestate in Oregon in December, 1953. The petitioners, citizens and residents of Yugoslavia, are (except Karadzole,

¹ Hereinafter sometimes called the "Convention". That treaties concluded between the United States and Serbia continued in force and effect between the United States and Yugoslavia upon the latter's emergence from the union with Serbia of Montenegro and certain territories of the former Austro-Hungarian Monarchy, was the conclusion reached in *Trancovic v. Artukovic*, 211 F.2d 565 (9th Cir. 1954), cert. denied 348 U.S. 818, in which the United States participated as *amicus* in support of that view. The Court below held that the Convention continues to be in force and effect between the United States and Yugoslavia. R 94, fn.; 349 P.2d at 263.

² Hereinafter sometimes called the "International Monetary Fund Agreement", or the "Agreement".

the Consul General) their respective brothers, sisters, nephews and nieces and their only heirs and next-of-kin. The State of Oregon filed petitions in the State Circuit Court for the escheat of the estates of both decedents upon the ground that as citizens and residents of Yugoslavia the petitioners were without capacity to inherit property in Oregon by virtue of § 111.070 of the Oregon Revised Statutes, for the reason that the requirements thereof were not met by Yugoslavia. R 1, 5. The Circuit Court found against the State, dismissed both petitions for escheat, and ordered distribution of the estates to the decedents' heirs and next-of-kin, the petitioners here. R 76-81. Upon the State's consolidated appeals, the Supreme Court of Oregon reversed, and ordered both estates escheated. R 82-107.

The petitioners answered Oregon's petitions for escheat by general denial, R 3, 7, and opposed them on three grounds: *First*, that the petitioners were not barred from inheriting under the Oregon statute, because all the requirements of the statute were in fact met by Yugoslavia; *Second*, that the Oregon statute was inapplicable to citizens of Yugoslavia, because citizens of that country are entitled to the same rights of inheritance in the United States as American citizens by virtue of Article II of the Convention, R 55, App. A, pp. 1a-2a, *infra*, which grants to Yugoslav citizens the same rights to acquire property in the United States, by inheritance or otherwise, as are enjoyed by citizens of the most favored nation, and the United States has by treaty granted to citizens of other nations the right to inherit property in the United States under the same terms and conditions as citizens of the

United States;³ and *Third*, that by reason of the adherence of both the United States and Yugoslavia to the International Monetary Fund Agreement, R 57, App. 43, pp. 3a-6a, *infra*, the maintenance by Yugoslavia of foreign exchange controls, consistent with such Agreement, could not in any event be considered as a failure by Yugoslavia to meet the requirement of paragraph (1)(b) of the Oregon statute. R. 84, App. C, p. 6a, *infra*.

The Circuit Court denied Oregon's petitions for escheat entirely on its findings that Yugoslavia in fact met all the requirements of the Oregon statute, and its orders refer neither to the Convention nor the International Monetary Fund Agreement. R 76-79.

On appeal, the Oregon Supreme Court held that the petitioners, not being in the United States, had no rights under Article II of the Convention, and, fur-

³ See, e.g., Article IX of the Treaty of Friendship, Commerce and Navigation concluded between the United States and Argentina, July 27, 1853, 10 Stat. 1005, Tr. Ser. 4, 1 Malloy, *Treaties*, etc., 20, 23, which provides in pertinent part:

In whatever relates to . . . the acquiring and disposing of property of every sort and denomination, either by sale, donation, exchange, testament or in any other manner whatsoever . . . the citizens of the two contracting parties shall reciprocally enjoy the same privileges, liberties and rights as native citizens . . .

The Secretary of State concurs in the view that the rights thus granted to citizens of the Argentine extend to citizens of Yugoslavia within the purview of Article II of the Convention. See the Note of the Secretary of State dated April 24, 1958, App. D; at p. 9a, *infra*. Certified copies of such Note and of the Yugoslav Ambassador's Note dated April 18, 1958, App. D, pp. 12a-20a, *infra*, to which it was in reply, have been lodged with the Clerk by the petitioners.

ther, that notwithstanding the adherence of both the United States and Yugoslavia to the International Monetary Fund Agreement, the mere existence in Yugoslavia of foreign exchange controls prevented Yugoslavia from meeting the requirements of paragraph (1)(b) of the Oregon statute, regardless of whether such controls were maintained consistently with the Agreement, and on this ground reversed the Circuit Court. R 82; 349 P.2d 255.

While recognizing that rights of inheritance granted by treaty necessarily override inconsistent State laws, as this Court has held, *e.g.*, in *Hauenstein v. Lynham*, 100 U.S. 483 (1880), and *Clark v. Allen*, 331 U.S. 503, 515, 517 (1947), the Court below construed the provisions of Article II of the Convention as being applicable only to Yugoslav citizens who are within the United States, and, by necessary implication, only to American citizens who are within Yugoslavia. R 94, 100; 349 P.2d at 263, 266. In so construing Article II of the Convention, the Court below completely disregarded, and gave no weight to the Secretary of State's carefully considered construction of it, concurred in by Yugoslavia, as applying to all citizens of the United States and Yugoslavia, regardless of their whereabouts. See App. D, pp. 7a-20a, *infra*. The Court below gave as its reason for ignoring the Secretary's construction only that he had acknowledged, correctly enough, that his construction could not be considered "as effecting any modification of the treaty". R 104; 349 P.2d at 268.

Moreover, in construing Article II of the Convention, the Court below looked only to its awkward language, and failed entirely to give any consideration to the plain purpose of the Convention and what the con-

sequences would be of construing Article II one way or the other. Thus, in arriving at its construction, the Court below did not take into account that the Convention has for its express purpose "facilitating and developing commercial relations," that the provisions of the Article II here involved deal not merely with the right of inheritance, but simultaneously and in identical terms with the right *to acquire and to dispose of property by whatever means, and to possess property*, and that to construe Article II as excluding from its purview in these respects American and Yugoslav merchants remaining at home but doing business with the other country by mail or cable, or by sending their buyers and salesmen abroad (as the Convention expressly contemplated) would defeat the Convention's very purpose.

The Court below relied entirely for its construction of Article II on *Clark v. Allen*, 331 U.S. 503, 514-516 (1947), which it considered to be controlling. R 100; 349 P.2d at 266. But it misread both the treaty provision there involved, and what was there held, and, in consequence, was mistaken in its reliance.

In its opinion, the Court below first correctly quoted the treaty provision with which *Clark* was concerned, as follows, R 98; 349 P.2d at 265:

Nationals of either High Contracting Party may have full power to dispose of their personal property of every kind within the territories of the other, by testament, donation, or otherwise, and their heirs, legatees and donees, of whatsoever nationality, whether resident or non-resident, shall succeed to such personal property, and may take possession thereof, either by themselves or by others acting for them, and retain or dispose of the same at their pleasure subject to the payment

of such duties or charges only as the *nationals of the High Contracting Party within whose territories* such property may be or belong shall be liable to pay in like cases. [Emphasis supplied by the Court]

But then, by a *tour-de-force* doing brutal violence to the language it had thus quoted, the Court below undertook to assimilate the question before it to what it mistakenly believed had been decided in *Clark*, saying, R 98; 349 P.2d at 265:

We are of the opinion that the following words and phrases found in the German Treaty of 1923: "Nationals of either High Contracting Party *** within the territories of the other" are of the same import and meaning as the words and phrases found in Article II of the Treaty of 1881; that is, "citizens of the United States in Serbia and Serbian subjects in the United States," a phrasing which the defendants ascribe to Victorian English.

In the *Clark* case, it was held that the language of Article IV of the German Treaty applied only to nationals of either of the party nations who were *within* the territory of the other. [The Court's omission and emphasis]

Thus, by the simple expedient of substituting asterisks for substance, the Court below completely perverted the treaty provision involved in *Clark*, and then plainly misstated what was held in *Clark*, although it correctly quoted from this Court's opinion, in pertinent part, as follows, R 98, 99; 349 P.2d at 265:

Mr. Justice Douglas, speaking for the court, says * * *:

* * * * In case of personalty, the provision governs the right of 'nationals' of either con-

tracting party to dispose of their property within the territory of the 'other' contracting party; and it is 'such personal property' that the 'heirs, legatees and donees' are entitled to take.

* * *

"We accordingly hold that Article IV of the treaty does not cover personalty located in this country and which an American citizen undertakes to leave to German nationals. * * *"

But having thoroughly misconceived the nature of the treaty provision involved, and this Court's decision in *Clark*, the Court below concluded, R 100; 349 P.2d at 266:

If we correctly appraise the position of defendants, they would, notwithstanding the doctrine of *Clark v. Allen*, supra, have us interpret the words "in Serbia" and "in the United States," as they appear in Article II of the Treaty of 1881, as referring to the place where property rights are granted rather than to the geographical location of the person claiming them. If thus construed the provision would accord to the nationals of either party wherever resident rights similar to those enjoyed by nationals of the most favored nation wherever resident. But this we decline to do, being impressed that the construction given to the German Treaty in the *Clark* case applies with equal force to the Serbian Treaty of 1881. * * *

But nothing of the sort was decided in *Clark*. The decision there was that the treaty applied to the succession to personal property in the United States only of decedents who were German nationals, and that it did not apply to the succession by German nationals to personal property in the United States of decedents who were American nationals. No question was there involved, and none was there decided, as to whether

the German treaty made any distinction based upon the whereabouts of either the decedent or his heir.

With Article II of the Convention thus disposed of, the Court below found no impediment to the application of the Oregon statute under which the capacity to inherit of an alien non-resident of the United States is made to depend upon the meeting of three conditions by the foreign country "of which such alien is an inhabitant or citizen." R 83, 84; App. C, p. 6a, *infra*. The second of these conditions, set out in paragraph (1)(b) of the statute, is that American citizens have

* * * rights * * * to receive by payment to them within the United States * * * money originating from * * * estates * * * within such foreign country * * *.

The Court below held that American citizens had no such "rights" in Yugoslavia because of the foreign exchange controls it found to exist in that country, and on that ground held the petitioners here without capacity to inherit. R 104, 105; 349 P.2d at 268. In reaching this conclusion, the Court below held, R 96; 349 P.2d at 264, that it had "no bearing on our present problem", that the Yugoslav foreign exchange law expressly provides that the foreign exchange regulations include "the provisions of agreements with foreign countries which are concerned with payments," Cl. Ex. 28, R 33-35, 71, that under Yugoslav law such provisions include the third paragraph of Article II of the Convention, which grants citizens of one country "liberty to export *freely* the proceeds of the sale of their property, and their goods in general" from the other, and that under Yugoslav law this provision is construed as applying to Americans without regard to

their whereabouts. R 11, 12, 21-25, 31, 32, 46-49, 63-67, App. A, p. 1a, *infra*. See fn. 18, p. 43, *infra*. The Court below simply disregarded Yugoslavia's interpretation of Article II, and reasoned that since Article II, construed in the manner it conceived *Clark* to require, grants no rights to citizens of one country not within the other, it was immaterial that under Yugoslav law the provisions of Article II override those of the foreign exchange regulations. R 96, *et seq.*; 349 P.2d at 264 *et seq.*

Nor did the Court below relate to this recognition by Yugoslavia's foreign exchange law of the supremacy of the rights of Americans under Article II of the Convention, the circumstance that the Department of State knows of no case in which an American beneficiary of a Yugoslav estate failed to receive payment in the United States of his distributive share, pp. 12, 13, *infra*, and that, as the Court itself conceded, "[t]he record is replete with evidence of remittances from estates in Yugoslavia to persons in the United States * * *". R 92; 349 P.2d at 262. Thus, the Court said, R 93; 349 P.2d at 262:

Even if it can be said these items of evidence do reveal a flow of exchange from Yugoslavia to American heirs as of December, 1953, they, at the most, only attest the indulgence of the Yugoslavian authorities as to the American heirs as of that time. Certainly, as discretionary acts, permissible under the Law, they do not evidence the presence of an unqualified and enforceable right to receive by delivery of funds in the United States to citizens thereof under the foreign exchange laws and regulations of that country in 1953. The fact that some American citizens were so favored does not preclude wonderment as to how many may have been denied "the right to receive" or, indeed,

whether those who did receive moneys by exchange, received all or only a part thereof. [Emphasis supplied]

The Court gives us no clue as to what inspired its "wonderment", and there is nothing in the record that as much as suggests that any American beneficiary of a Yugoslav estate has been denied the right to receive his distributive share in dollars in the United States, or has, to use the vernacular, been short-changed.⁴ Indeed, as the Court was informed, the Department of State, to which any complaint concerning such matters would ordinarily be addressed, reported in December, 1957, that:

The Department * * * does not have complete * * * information regarding all claims of American citizens to share in estates in Yugoslavia * * *. Such matters are ordinarily handled in Yugoslavia, as in other countries, by the heir * * *

⁴ The character of the Court's approach is emphasized by its later decision in *Mullart v. Oregon*, 353 P.2d 531 (1960), where, taking note that the Soviet Union's absorption of Estonia in 1941-3 remained unrecognized by the United States, it held an Estonian living in Estonia eligible to inherit because under a 1925 treaty between the United States and Estonia, American consuls in that country had the right to receive, and, apparently to transfer freely to the United States, legacies due to Americans, notwithstanding foreign exchange laws generally prohibiting unlicensed remittances abroad. But one consequence of the unrecognized incorporation of Estonia into the Soviet Union is that there have been no American consuls in Estonia. See, e.g., Department of State, *Foreign Service List*, July 1960, 19. Another is that there must be serious doubt, to say the least, whether the authorities in Estonia recognize the 1925 treaty as continuing in force. Indeed, for the purposes of trade controls, the United States treats Estonia as a part of the Soviet Union notwithstanding such treaty. See, e.g., Department of State, *Treaties in Force* (1960) 57, fn.

personally or by * * * [his] legal representative
* * *

* * * The Department is normally informed
* * * only when the American citizen * * * be-
lieves he is * * * being denied the share of an
estate * * * rightfully his, or * * * is encounter-
ing unwarranted difficulties * * * in effecting the
transfer to the United States of * * * [its] pro-
ceeds * * *.

* * * [T]he Department has not been apprised
of any instance where an American citizen has not
been permitted to inherit * * * in Yugoslavia, or,
after * * * application therefor, has not been
granted permission to transfer his inheritance
* * * to the United States in dollars.⁵

The position of the Court below was that under the
Oregon statute it is immaterial whether such payments
have *in fact* been received, since it has construed the
statutory requirement as being that Americans have
the legal right to compel them.⁶ As to that, the Court
below found that "the testimony of the Yugoslavian
officials, including the diplomatic correspondence * * *
serves at most to create a conflict * * *". R 93; 349
P.2d at 262. The record does not support this conclu-

⁵ See Note of the Department of State to the Yugoslav Embassy,
December 26, 1957, the text of which is set out in the Brief for
the United States as *Amicus Curiae*, submitted on the petition for
certiorari herein, App. B, pp. 22-24. The text of the Yugoslav
Embassy's note of November 4, 1957, to which such note was in
reply, is set out in the same Brief, App. B, pp. 24-26. Certified
copies of both notes have been lodged with the Clerk by the peti-
tioners.

⁶ Conversely, it would appear from the *Mullart* case, fn. 4, p. 12,
supra, that the Court below considers it immaterial whether the
"legal" right upon which it insists, has any substance.

sion,⁷ and the Court's opinion puts it beyond mere inference that the "conflict" it found was, actually, between the expert testimony and other evidence of Yugoslav law received at the trial of this case, and the conclusions that were reached by the Supreme Court of California on the record before it in *Arbulich's Estate*, 41 Cal. 2d 86, 257 P.2d 433 (1953), cert. denied 346 U.S. 897. R 87-92; 349 P.2d at 258, 262. However that may be, the Court below found Yugoslavia's foreign exchange law in effect in December 1953, to be the same as it was found in *Arbulich* to be in 1947, and, in that form to "negative the concept of an unqualified and enforceable right to receive delivery of Yugoslavian inheritance in this country by an American citizen * * *". R 87-92, 104; 349 P.2d at 268. Then, after concluding that the "adverse effect" that followed under paragraph (1)(b) of the Oregon statute, R 83, 84, App. C; p. 6a, *infra*, was not "circumvented" by Article II of the Convention, construed as

⁷ For example, with respect to the crucial Article 8 of the Yugoslavia exchange law, Cl. Ex. 28, R 34, 71, the Court below says, "although pressed * * * the * * * witness Temer * * * was unable to say whether the current Article 8 * * * was effective in December, 1953". R 96; 349 P.2d at 264. The record, however, discloses nothing of the sort, but rather that the witness was emphatic that Article 8, as set out in Cl. Ex. 28, was in effect at that time. Thus, on redirect examination he was asked, "* * * was this in effect in December, 1953?", and he replied, "Yes, it was in effect in 1953." R 34. Similarly, on recross-examination he testified, "* * * I can tell you that in 1953 this, what I have introduced now, was Article No. 8 * * *". R 35. See also, fn. 18, p. 43, *infra*. Article 8 was not referred to on direct-examination, and was mentioned on cross-examination when the witness testified that the translation of the foreign exchange law as set out in *Arbulich*, which counsel read to him, did not include Article 8. Nor was he "pressed" or "unable to say" on cross-examination when Article 8 became effective. R 18-28; 28-33, esp. 31, 32.

it considered *Clark* to compel, the Court below quickly came to the same conclusion with respect to the International Monetary Fund Agreement.

The Court below rejected the petitioners' contention that assuming, *arguendo*, that the Yugoslav foreign exchange controls, permissible under the International Monetary Fund Agreement, were applicable to remittances to the United States of the distributive shares of American beneficiaries of Yugoslav estates, nevertheless, in view of the adherence of both the United States and Yugoslavia to the Agreement, a State of the United States could not deprive citizens and residents of Yugoslavia of the capacity to inherit, which they would otherwise have under its laws, solely because of the existence in Yugoslavia of such controls. The Court below said, R 103: 349 P.2d at 268:

The * * * Agreement gives no support to the thesis of defendants and, to the contrary, is in a large sense on [*sic*] international recognition that *some* countries, *rightly or wrongly*, would impose strictures such as are exemplified by the foreign exchange laws of Yugoslavia and Bulgaria * * *. [Emphasis supplied]

What the Court below meant to imply by *some* countries and by *rightly or wrongly*, is not clear. Certainly, as the recent difficulties of the dollar demonstrate, as the conferees at Bretton Woods well knew and the Agreement fully recognizes, no country is immune from the economic imbalances which, if continued, make the regulation of foreign exchange transactions *necessary*. See, Halm, *International Monetary Cooperation* (1945) 35, 36. Certainly, too, as the Agreement also recognizes, the ability of such regulations to achieve the result for which they are designed, and which alone will

permit their withdrawal, must depend in large measure upon their not being considered in other countries as "contrary to public policy."

SUMMARY OF ARGUMENT

I

Article II of the Convention guarantees to citizens of each country the rights enjoyed by citizens of the most favored nation to acquire, possess and dispose of property located in the other, and to acquire and dispose of such property "by purchase, sale, donation, exchange, marriage contract, testament, inheritance or in any other manner whatever". The question is whether the words "in Serbia" and "in the United States" appearing in Article II, relate, respectively, to the location of the "citizens of the United States" and the "Serbian subjects" to whom such rights are guaranteed, or to where such citizens and subjects, respectively, are guaranteed such rights.

To construe Article II as excluding citizens of one country not within the other from its guarantee of the right to acquire by inheritance property located in the other, would necessarily require that Article II be construed as not guaranteeing to citizens of either country who remain at home, the right to acquire property located in the other by any means whatever, or to possess or to dispose of property located in the other, and further, that Article IV of the Convention be construed as not guaranteeing to citizens of either country who remain at home, access to the courts of the other, and other civil rights.

The Convention was concluded expressly for the purpose "of facilitating and developing the commercial

relations established between the two countries", and so to construe its Article II would leave citizens of both countries who remain at home, but who do business with the other through agents (as the Convention expressly contemplates) or by mail or cable, without any guarantee as to *any* right to acquire, own or dispose of property in the other. Since such rights are essential to the existence and development of commercial relations, any such construction of Article II would be inconsistent with, and frustrating of the Convention's express purpose. Such a construction must be rejected.

The several parts of a treaty are to be reasonably construed in context, and in relation one to another, so that the whole will operate to give effect to its purpose. A treaty must be liberally construed to give effect to its purpose, and, to that end, if it is susceptible of two constructions, the construction which enlarges the rights which may be claimed under it, is to be preferred over one that would restrict them. Article II of the Convention is properly to be construed as extending its guarantees to citizens of both countries, regardless of their whereabouts.⁸

II

Article II of the Convention has been consistently construed by the Executive and the Congress, and by the other party bound thereby, as extending the rights therein granted to citizens of both countries regardless of their whereabouts. That construction is sup-

⁸ It is not controverted that so construed, Article II of the Convention would entitle the petitioners to the same inheritance rights as "native citizens" of the United States, since such rights have been granted by treaty to the citizens of Argentina. See fn. 3, p. 5, *supra*.

ported by the objective sought to be attained by the Convention's American draftsman, negotiator and signatory, and his conclusion that it had been achieved, and, further, by the context in which the language of Article II is found in the British treaty from which it would appear ultimately to have been derived. So construed, Article II of the Convention has been relied on by the United States, and acquiesced in by Yugoslavia, as protecting American rights in Yugoslavia which, under the construction of the Court below, would be wholly unprotected. Such construction is, accordingly, entitled to great weight. Since it is reasonable, and gives effect to the Convention's express purpose, it is its proper construction.

III

Federal policy established by federal action within the constitutional competence of the federal government, will override state policy inconsistent therewith, even if in the absence of such federal action, it would be within the state's constitutional competence to adopt and enforce its own policy. The conduct of foreign affairs, and the regulation of foreign commerce, the value of money and of foreign "coin," are committed by the Constitution exclusively to the federal government, and federal policy in those respects, as established by the adherence of the federal government to the International Monetary Fund Agreement, and its membership in the International Monetary Fund, pursuant to an act of Congress, is that Yugoslavia, also a party to the Agreement and a member of the Fund, may maintain or impose foreign exchange controls consistent with the Agreement.

It is clearly inconsistent with such federal policy so established for a state to deny a citizen and resident of

Yugoslavia rights of inheritance that he would otherwise have under its laws, solely because of the existence in Yugoslavia of foreign exchange controls consistent with the Agreement. Moreover, under the Agreement, the United States has committed itself to consider the foreign exchange regulations of other members of the Fund, consistent with the Agreement, as not offending against its public policy. Such commitment is dishonored if a state may penalize citizens and residents of other countries, members of the Fund, by depriving them of rights which they would otherwise have under its laws, solely because such countries maintain foreign exchange controls consistent with the Agreement.

The Agreement, to which both the United States and Yugoslavia are parties, is such an expression of paramount federal policy within the competence of the federal government as to preclude such state action, even assuming, *arguendo*, that Yugoslavia's foreign exchange regulations, consistent with the Agreement, are applicable to remittances to American beneficiaries of Yugoslav estates of their distributive shares.

ARGUMENT

POINT I

The Express Purpose of the Convention Is to Facilitate and Develop Commercial Relations Between the Two Countries. A Construction of the Convention Which Would Exclude from the Benefits of Article II. Citizens of Either Country Not Within the Other, Would Be Inconsistent With, and Frustrating of Its Purpose, and Must Be Rejected. Considered in Context, and With a View to Effectuating the Convention's Purpose, Article II Must Be Construed as Extending to Citizens of Both Countries Regardless of Their Whereabouts.

Article II of the Convention in pertinent part provides, R 55, App. A, p. 1a, *infra*:

In all that concerns the right of acquiring, or possessing or disposing of every kind of property, real or personal, *citizens of the United States in Serbia and Serbian subjects in the United States, shall enjoy the rights which the respective laws grant or shall grant in each of these states to the subjects of the most favoured nation.*

Within these limits, and under the same conditions as the subjects of the most favoured nation, they shall be at liberty to acquire and dispose of such property, whether by purchase, sale, donation, exchange, marriage contract, testament, inheritance, or in any other manner whatever * * *
[Emphasis supplied]

Couched in identical terms, Article IV of the Convention guarantees that "*citizens of the United States in Serbia and Serbian subjects in the United States* * * * shall have reciprocally free access to the courts of justice" and shall enjoy the same rights as natives, or of citizens of the most favored nation, with respect to "domiciliary visits" to their factories and warehouses, etc. R 56, App. A, p. 2a, *infra*.

Grammatically, the question is whether the words "in Serbia" and "in the United States" are descriptive, respectively, of the location of the "citizens of the United States" and the "Serbian subjects" to whom Articles II and IV guarantee rights, or whether they are descriptive of the places where such citizens and subjects, respectively, are guaranteed to have such rights. As a matter of syntax, the stilted language of this phrase would seem susceptible of either construction, depending upon where the emphasis is put, either arbitrarily, or considering the context in which it is used, and the consequences of reading it one way or the other, viewed in the light of the Convention's purpose.

If the words "in the United States", and as a necessary consequence, the words "in Serbia" are, as the Court below construed them, descriptive of the location of the Serbian subjects and the American citizens to whom alone Article II guarantees rights, then it follows, not only as the Court below held, that citizens of either country remaining at home have no right to inherit property located in the other, but further, that under the Convention they have no right to acquire, or to dispose of property located in the other country by any means whatever, or to possess, or own such property. This consequence of the holding of the Court below is inescapable, for the right of citizens of one country to inherit property located in the other is but one aspect of their right to acquire, and to dispose of such property by the means mentioned in the Convention, "or in any other manner whatever", and to possess, or own, such property. A construction which denies to any category of the citizens of either country the right under the Convention to acquire property located in the other, in any given manner, must, of

necessity, deny to them every right under the Convention to acquire or to dispose of such property in any manner, and any right, as well, to possess or own, such property.

It follows, too, from the holding of the Court below, that citizens of either country who remain at home would not be entitled under Article IV to "free access to the courts of justice" of the other, or to the stipulated freedom from "domiciliary visits" to their factories and warehouses, etc., located in the other.

In short, the construction of the Court below is that the rights provided by the Convention extend to Serbians [*i.e.*, Yugoslavs] only so long as they are within the United States as transients or residents, and to Americans only while similarly in Serbia [*i.e.*, Yugoslavia]. But, the encouragement of neither travel nor emigration is the Convention's purpose, and although such incidental consequences were not unforeseen, it would be unreasonable to construe the Convention as meaning that the rights guaranteed thereby extend only to visitors and emigrants unless, by coincidence, such construction would in fact effectuate the Convention's actual purpose. *Wright v. Henkel*, 190 U.S. 40, 57 (1903).

The purpose of the Convention is, expressly, "facilitating and developing the commercial relations" between the two countries, R 54, App. A, p. 1a, *infra*, and its proper construction is, necessarily, one that will give effect to this objective. *DeGeofroy v. Riggs*, 133 U.S. 258 (1890); *In re Ross*, 140 U.S. 453 (1891); *Ford v. United States*, 273 U.S. 593 (1927); *Todoz v. Union State Bank*, 281 U.S. 449 (1930); *Santovincenzo v. Egan*, 284 U.S. 30 (1931). Conversely,

a construction which is "inconsistent with the general purpose and object" of the Convention, or which would render it "null and inefficient," must necessarily be rejected. *Sullivan v. Kidd*, 254 U.S. 433, 440 (1921); *DeGeofroy v. Riggs*, *supra*, 133 U.S. at 270. Thus, this Court has repeatedly held that "the accepted canon" requires that a treaty be construed "liberally to give effect to the purpose which animates it" so that even "where a provision of a treaty fairly admits of two constructions, one restricting, the other enlarging rights which may be claimed under it, the more liberal interpretation is to be preferred". *Bacardi Corp. v. Domenech*, 311 U.S. 150, 163 (1940); *Shanks v. Dupont*, 3 Pet. (U.S.) 242, 249 (1830); *Hauenstein v. Lynham*, 100 U.S. 483 (1880); *Jordan v. Tashiro*, 278 U.S. 123, 127 (1928); *Nielson v. Johnson*, 279 U.S. 47 (1929); *Factor v. Laubenheimer*, 290 U.S. 276, 293, 294 (1933).

Commerce between two nations is typically conducted by means of buyers and salesmen of merchants and manufacturers of one country, going to the markets of the other, to purchase commodities needed at home, and to sell wares they have for export,⁹ or by means of direct communication, by mail or cable, etc., between prospective sellers in one country and prospective purchasers in the other. Sellers who have established markets abroad, frequently ship their goods to the importing country and warehouse them for their

⁹ Obviously, even where prospective purchasers and sellers are individuals, it is likely to be relatively seldom that the principals themselves would make the buying or selling trip. Certainly, where they are partnerships, it is even more unlikely that all the partners would make the trip. And in the case of corporations, of course, there is no possibility of the principals acting except through agents.

own account, or in their own warehouses, in anticipation of future sales.

—In the normal course of commercial relations between any two countries, it will necessarily be contemplated in any given transaction, that the purchaser in the importing country will acquire title to the goods upon their delivery to a common carrier, or dockside, or aboard a vessel, or at some other point in the exporting country, or that the seller will retain title to the goods until some point in time after their arrival in the importing country.¹⁰ Commercial relations between any two countries thus necessarily contemplate that citizens and residents of each country will acquire, possess, and dispose of goods in the other.

So, too, in any given transaction, the sale may be on open account, resulting in credits on the purchaser's books in favor of the seller, available to be drawn against, or the parties may agree to payment by deposit to the seller's account with a bank or merchant in the importing country, by the purchaser's establishment through a bank in his country of a letter of credit in favor of the seller, payable, against draft, as the parties may agree, in one or the other country, or by cash or check in either country. Commercial relations between any two countries thus necessarily contemplate that citizens and residents of each country will acquire credits on the books of citizens and residents of the other, and that such credits may be drawn

¹⁰ Indeed, it may be contemplated both that the buyer will acquire a property interest in the goods before they leave the exporting country, and that the seller will retain a property interest in them until after they arrive in the importing country. See, generally, 2 Williston, *Sales* (Rev. Ed.) §§ 280-286b; Uniform Commercial Code (1957) §§ 2-319—2-324; 2-326; 2-327; 2-401.

against and transferred, by means of drafts or otherwise.

Commercial relations between any two countries must necessarily contemplate, also, the probability of disputes arising with respect to the existence and meaning of contracts and whether they have been breached or fulfilled, the ownership of property and the negotiability of commercial paper, and, further, that commercial activity is seldom without problems of collection.

Thus, it must be clear that if the Convention's purpose of "facilitating and developing" commercial relations between the two countries is to be attained, the right of "acquiring, possessing or disposing of every kind of property," and "to acquire and dispose of such property, whether by purchase, sale, * * * exchange, * * * testament, inheritance, or in any other manner", guaranteed by Article II to citizens of one country with respect to property located in the other, and the "free access to the courts of justice" in one country which Article IV guarantees to citizens of the other, must extend to such citizens without regard to whether they happen to be in one country or the other. For, it is inconceivable that the Convention contemplated, or that its purpose could be achieved if it should be construed as meaning, for example, that a Yugoslav purchaser of American goods for export, had no right to acquire title to them in the United States unless he were in the United States, or that an American exporter of goods to Yugoslavia had no right to possess, or dispose of them there, unless he were in Yugoslavia, too. Nor would it serve to facilitate and develop commercial relations between the two countries to construe Article IV as not granting access to the courts of justice of either country to citizens of the other remaining at home.

The Convention is thoroughly realistic in its coverage of commercial practice. Thus, in its Article III, it was expressly contemplated that there would be, R 55, App. A, p. 1a, *infra*:

Merchants, manufacturers, and trades people in general of one of the two contracting countries traveling in the other, or sending thither their clerks and agents—whether with or without samples — * * * for the purpose of making purchases or sales * * *. [Emphasis supplied]

And, in its Article VII, it was expressly contemplated that there would be, R 56, App. A, p. 2a, *infra*:

* * * products of the soil or of the industry of Serbia * * * imported into the United States of America, and * * * products of the soil or of the industry of the United States * * * imported into Serbia * * * destined for consumption in the country, for warehousing, for re-exportation or for transit * * *.

It is in this context, of course, that Article II must be read, for "all parts of a treaty are to receive a reasonable construction with a view to giving a fair operation to the whole". *Sullivan v. Kidd, supra*, 254 U.S. at 439; *In re Ross, supra*, 140 U.S. at 475. And if, as the Court below held, the words "in the United States" and "in Serbia" are to be taken as meaning that Article II is a guarantee of rights only to Yugoslav citizens who are in the United States, and only to American citizens who are in Yugoslavia, then in large measure is the Convention's purpose frustrated. For, if the Convention be so construed, a citizen of one country, remaining at home and doing business with the other through clerks or agents, or by mail or cable, etc., would be wholly unprotected by Articles II and

IV. He would have no assurance that his heirs, also living at home, would succeed to his property in the other country in the event of his death, and this lack of protection would extend to credit balances resulting from sales, or established in anticipation of purchases; to goods purchased but not yet exported, and to goods shipped but warehoused pending sale or re-exportation. Indeed, a citizen of one country having business with the other, but remaining at home, would have no assurance that he could, in the ordinary course of a commercial transaction, give or acquire title to, or even "possess" goods in the other, or in the event of a dispute, that he would have access to its courts of justice.

In brief, if the narrow construction adopted by the Court below has any validity, citizens of both countries would be left largely without those very guarantees concerning property and civil rights in the other, that are so essential to the relations that the Convention was designed to foster and develop.

Of course, the Convention contemplated that some citizens of each country would visit or reside in the other; but it contemplated, too, that others, necessarily the larger part, would not. It would be unreasonable to suppose that the Convention, concluded for the express purpose of facilitating and developing commercial relations between the two countries, contemplated that citizens of each country would have to travel to the other every time title to property located there was intended to pass to or from them, or else the Convention's guarantees would be of no avail. But that is exactly the result that the construction adopted by the Court below would achieve, and merchants in each country doing business with the other, but remaining

at home, would be wholly unprotected by the provisions of Article II. This is not, of course, to say, that Article II, in terms without limitation in that regard, is applicable only to merchants. *Techt v. Hughes*, 229 N.Y. 222, 128 N.E. 185 (1920). But the effect of its application to merchants, construed in one way or the other, is a proper test of whether a construction of the Convention is acceptable as one which would "give effect to the purpose which animates it", *Bacardi Corp. v. Domenech*, *supra*, 311 U.S. at 163, or is to be rejected as one which would render it "null and inefficient". *DeGeofroy v. Riggs*, *supra*, 133 U.S. at 270.

When considered in context, in the light of the Convention's express purpose, and the consequences that would necessarily follow, it is evident that the words "in the United States", and "in Serbia", cannot reasonably be taken as meaning that the rights guaranteed by Article II extend only to citizens of one country who are within the other, and that such construction must be rejected as being "inconsistent with the general purpose and object" of the Convention. *Sullivan v. Kidd*, *supra*, 254 U.S. at 440. The Convention's purpose, and the context in which such words are used, require that these words be interpreted as referring to the places where the rights granted will be enjoyed, and, that Article II be construed as extending to all citizens of both countries, regardless of their whereabouts.

POINT II

The Executive, the Congress and the Other Party Bound by the Convention Have Construed Article II as Granting the Rights Therein Provided to Citizens of Both Countries Regardless of Their Whereabouts, and Their Construction, Which Is Supported by the Convention's History, Is Entitled to Much Weight. It is the Proper Construction of Article II.

Expressly because of the considerations urged under Point I, *supra*, the Secretary of State, in response to a formal inquiry from the Ambassador of Yugoslavia, confirmed in a note dated April 24, 1958 that, App. D, p. 9a, *infra*:

The Department of State concurs in the Yugoslav interpretation of Article II of the 1881 Convention. That is to say, it is the opinion of the Department that Article II provides that whatever right is accorded in this country to nationals of any third country, wherever resident, with respect to the acquisition, possession, or disposition of property (including the rights of inheritance and transfer of proceeds thereof), shall be accorded likewise in this country to Yugoslav nationals wherever resident and irrespective of the decedent's nationality. The Embassy's citation of the 1853 treaty between the United States of America and Argentina in connection with this matter appears to be appropriate.

The Secretary of State supported this conclusion as follows, App. D, pp 9a-11a, *infra*:

* * * The critical words "citizens of the United States in Serbia and Serbian subjects in the United States shall enjoy [certain rights]" as they appear in the first paragraph of Article II may be given at least two plausible interpretations, namely: (1) The words "in Serbia" and "in the United States" may be deemed adjectival, modifying respectively "citizens of the United States"

and "Serbian subjects". (2) The words "in Serbia" and "in the United States" may be deemed adverbial, modifying "shall enjoy". The first of these interpretations would limit the application of the article to the rights of nationals of the one country present in the other. However, a literal reading of the pertinent phraseology in context does not require such a restrictive interpretation. Rather, a liberal interpretation of the ambiguous portion produces a reasonable construction consonant with the spirit of the Treaty as a whole.

* * *

As stated in the preamble thereto, the 1881 Convention was entered into for the purpose of "facilitating and developing the commercial relations established between the two countries". The restrictive view would probably produce results inconsistent with this purpose. For example, a national of one country, also resident therein, wishing to make an *inter vivos* disposition of property belonging to him and located in the other country would have been required to make the long and then arduous trip to the other country to effect the disposition. It seems equally inconsistent with the expressed purpose of the Convention to make an alien's rights of inheritance turn on his location at the time of decedent's death.

Therefore, * * * it appears that the interpretation most consistent with the purpose of the Convention, and with the policy reflected in treaties between the United States of America and other countries, is to interpret the words "in Serbia" and "in the United States" as referring to the place where property rights are granted rather than to the geographical location of the person claiming such rights. As thus construed, the provision would accord to nationals of either party *wherever resident* rights similar to those enjoyed by nationals of the most-favored-nation *wherever resident*.

The Secretary of State also pointed out, App. D, p. 11a, *infra*, that a "review of all relevant correspondence available at the National Archives indicates no intention [on the part of the negotiators] contrary to this interpretation"; and that such interpretation was in harmony with American policy as evidenced by similar treaties negotiated in the period. Thus, the Secretary wrote, App. D, p. 10a, *infra*:

A review of the negotiating history of the 1881 Convention discloses nothing which supports the theory that the Governments of the United States and Serbia intended to provide that only some and not all of the nationals of the respective countries would be entitled to most-favored-nation treatment with respect to the acquisition, possession, and disposition of property. In this connection, it appears to have been the consistent policy of the United States, as reflected in treaties concluded between 1850 and 1890, to accord rights of inheritance and succession to property to nationals of the other contracting party without regard to their residence at the time of the decedent's death.

The complete text of the Secretary's note, and of the Yugoslav Ambassador's note of April 18, 1958, to which it is in reply, both well-considered expositions of Article II of the Convention, are set out in App. D, pp. 7a-20a, *infra*.¹¹

This construction of the Convention is not new. Thus, ten years earlier, when in 1948 the United States agreed with Yugoslavia to a settlement of the claims of Amer-

¹¹ This exchange of notes occurred while Oregon's appeal was pending in the Court below. Copies of the notes were, however, furnished to the Court below. R 104; 349 P.2d at 268. Certified copies of the notes have been lodged with the Clerk by the petitioners.

ican citizens against Yugoslavia for the taking of American property in that country, one of the objectives was to secure assurances for the future. Accordingly, Article 5 of the Settlement Agreement provided, 62 Stat. 2658; T.I.A.S. 1803; R 52, 53:

The Government of Yugoslavia agrees to accord to nationals of the United States lawfully continuing to hold, or hereafter acquiring assets in Yugoslavia, the rights and privileges of using and administering such assets and the income therefrom within the framework of the controls and regulations of the Government of Yugoslavia, on conditions not less favorable than the rights and privileges accorded to nationals of Yugoslavia, or of any other country, in accordance with the Convention of Commerce and Navigation between the United States of America and the Prince of Serbia, signed at Belgrade, October 2-14, 1881.

The Congress considered this provision as obliging Yugoslavia "to continue to grant most-favored-nation treatment to Americans in ownership and acquisition of assets in Yugoslavia",¹² and it must be obvious that the United States would not have been content with a mere reference to the Convention if it had been considered that Article II, its property-rights provision, applied only to such few Americans as were, or were likely to be in Yugoslavia. But the decision of the Court below, if allowed to stand, may reduce the 1948

¹² See S.Rep. No. 800, 81st Cong. 2d Sess., p. 4 and H.Rep. No. 770, 81st Cong., 1st Sess., p. 4. The identical statement was made by the Senate Foreign Relations Committee and the House Foreign Affairs Committee in reporting favorably on the bill that became the International Claims Settlement Act of 1949, 64 Stat. 12, Tit. 22 U.S.C. Sec. 1621, *et seq.*, under which the claims against Yugoslavia were adjudicated, and the proceeds of the settlement distributed.

guarantee to just that, even though Yugoslavia, too, has considered it as extending to all Americans, whether in Yugoslavia or not. App. D, pp. 15a-17a, *infra*. R 15, 21-23, 31-35, 46, 63-67.

Moreover, the construction placed upon Article II by the Congress, the State Department and Yugoslavia is exactly that of Eugene Schuyler, its American draftsman, negotiator and signatory, who, in commenting on it in an official report to the Department of State, transmitted March 29, 1883, said:

By Commercial and Consular treaties lately concluded, *citizens of the United States have in Serbia* all the rights and privileges enjoyed by subjects of other nations.¹³ [Emphasis supplied]

Thus, Schuyler, too, clearly considered that the words "in **S**erbia" (and, necessarily, the words "in the United States") as used in the treaty he drafted, negotiated and signed, described where the enjoyment of the stipulated rights was guaranteed, rather than the location of the Americans (and the Serbians, respectively) who would enjoy them.

The apparent source of the awkward phraseology of the Convention, and the context in which it was originally used, serve to explain the relative obscurity of the language Schuyler used in his treaty, as compared with the clarity of his report.

On February 7, 1880, a Treaty of Friendship and Commerce had been concluded between Great Britain

¹³ Report No. 2, Serbian Consular Series, March 29, 1883, a certified copy of which has been lodged with the clerk by the petitioners. The Consular treaty, 22 Stat. 968, Tr. Ser. 320, 2-Malloy, *Treaties*, etc. 1618, was concluded simultaneously with the Convention.

and Serbia. XV Hertslet, *Treaties and Conventions* (1885) 342-347. That Schuyler was familiar with the Anglo-Serbian treaty, and turned to it in drafting and negotiating the Convention, appears clearly from his dispatch of April 30, 1881 to the Secretary of State, in which he said:

Referring to your despatch * * * dated April 12th, on the subject of negotiations for a Commercial Treaty with Serbia, * * * in my opinion it is for the interest of American commerce to conclude conventions with Serbia by which *Americans will be placed on the same footing as the subjects of other countries*, both as regards commercial facilities and the protection which they can receive from the laws * * * * *

* * * [I]t would be best for the * * * United States to see that its citizens enjoy the same *rights and privileges in Serbia* as do the subjects of other powers * * * * *

A commercial treaty with Serbia has been concluded by Great Britain * * * * *

As to the commercial treaty, in my opinion the best form would be that that I have just concluded with Roumania, omitting articles 11 to 16 inclusive and inserting two articles similar to articles 11 and 12 *in the British treaty with Serbia* * * *. * * * I see no objection to Mr. Kasson's draft omitting articles 2, 3, and 6, and adding articles similar to 11 and 12 *of the British treaty* as mentioned above.¹⁴ [Emphasis supplied]

The treaty Schuyler had concluded with Roumania (which Roumania failed to ratify) is, insofar as con-

¹⁴ Dispatch No. 66, Roumanian Diplomatic Series, April 30, 1881, a certified copy of which has been lodged with the Clerk by the petitioners. The language of Articles 11 and 12 of the British treaty appears almost verbatim in Articles XI and XIII, respectively, of the Convention.

cerns the phraseology here in question, the same as the Convention. 75 *Regular Confidential. Printed Documents before the Senate of the United States in Executive Session* (1915), 894. Accordingly, Schuyler must have been satisfied that its phraseology, transposed into a treaty with Serbia, would place Americans "on the same footing," and guarantee that they would "enjoy the same rights and privileges in Serbia," as British subjects under the Anglo-Serbian treaty, "as regards commercial facilities and the protection they can receive from the laws * * *." This is confirmed by his 1883 statement, p. 33, *supra*, that under the Convention "citizens of the United States *have in Serbia* all the rights and privileges enjoyed by subjects of other nations".

The significance of Schuyler's use of the Anglo-Serbian treaty lies in the circumstance that in its provisions relating to property and civil rights, the exact counterpart of the phrase here in question was used. There, however, it appeared in apposition to another phrase which foreclosed any possibility of ambiguity. Thus, the *first* paragraph of Article I of the Anglo-Serbian treaty, XV Hertslet, *loc. cit.*, *supra*, p. 34, provided:

Art. 1 *British subjects who reside temporarily or permanently in Servia, and Servian subjects who reside temporarily or permanently in the territories * * * of Her Britannic Majesty, shall enjoy therein with respect to residence and the exercise of commerce and trade, the same rights as, and shall not be subject to any higher or other imposts or taxes * * * than natives, or the subjects of any other country the most favoured in this respect by either of the Contracting Parties. [Emphasis supplied]*

But in the *second* paragraph of Article I, and in Articles II and IX of the Anglo-Serbian treaty, quite different phraseology was used by its draftsmen, who, obviously, knew how to limit a guarantee of rights to residents and sojourners. Thus, these provisions read:

Art. 1 * * *

*British subjects in Servia, and Servian subjects in the territories * * * of Her Britannic Majesty, shall enjoy the same treatment as natives, or as is now granted, or may hereafter be granted, to the subjects of any other country the most favoured in this respect, with regard to the acquisition, the holding, and the disposal of property, and all charges on it, with regard to access to Courts of Law and in the prosecution and defence of their rights, and in regard to domiciliary visits to their dwellings, manufacturies, warehouses, or shops.*
* * *

Art. II * * * in all that relates to local dues, customs formalities, brokerage, patterns, or samples introduced by commercial travellers, and all other matters connected with trade, *British subjects in Servia, and Servian subjects in the territories * * * of Her Britannic Majesty, shall enjoy most-favoured-nation treatment.*

* * *

Art. IX *British subjects in Servia and Servian subjects in the territories * * * of Her Britannic Majesty, shall enjoy the same rights as natives, or as are now granted, or may hereafter be granted, to the subjects of any third Power the most favoured in this respect in everything relating to the property in trade marks and trade labels or tickets, as well as in patterns and designs for manufactures. * * * [Emphasis supplied]*

Certainly, if by "British subjects in Serbia, and Servian subjects in the territories * * * of Her Britannic Majesty", only the subjects of one country "who reside temporarily or permanently" in the other were meant, the single word "*they*" would have sufficed for the whole of the quoted phrase in the second paragraph of Article I, and the quoted portion of Article II would have been largely superfluous as already covered by the *first* paragraph of Article I. Furthermore, with reference to Article IX, is it probable that the marks, labels, patterns and designs of British residents and sojourners in Serbia *only* were intended to be protected from infringement, while those of the great manufacturing and exporting houses of Manchester, Birmingham and Sheffield were not?

Thus, as used in the Anglo-Serbian treaty, the meaning of the phrase "British subjects in Serbia, and Servian subjects in the territories * * * of Her Britannic Majesty" appears not only from the immediate context in which it is found, but from its use in contrast with the phrase "British subjects who reside temporarily or permanently in Serbia, and Servian subjects who reside temporarily or permanently in the territories * * * of Her Britannic Majesty". In weighing the rights granted by the Convention, as against those granted by the Anglo-Serbian treaty, it was possibly not foreseen that the absence from the Convention of some contrasting phrase such as the latter, might leave latent a question as to the meaning of "citizens of the United States in Serbia and Servian subjects in the United States".¹⁵ However, Schuyler's report makes

¹⁵ As noted above, Schuyler indicated in his dispatch of April 30, 1881, to the State Department that he considered his Roumanian treaty the best form to follow, and that the phraseology here

it clear that the phrase was used in the Convention in the broad sense of its counterpart in the Anglo-Serbian treaty, and is not to be given the narrow meaning of the other phrase, omitted from the Convention, with which it was there used in contrast. Certainly, if the narrow meaning be attributed to it, then, Schuyler failed in his objective, which he confidently believed that he had attained, of concluding a treaty which accorded to Americans "rights and privileges in Serbia" no less than those enjoyed by citizens of any other country.

Moreover, from his dispatch of April 30, 1881, p. 34, *supra*, it is clear that in negotiating and drafting the Serbian treaties of 1881, Schuyler's concern was American "*rights and privileges in Serbia*", rather than the rights and privileges of the few, if any, *Americans in Serbia*. Thus, he wrote:

* * * In consideration * * * that Serbian legislation and courts * * * are based on French and

in question may also be found in that treaty, which, however, never came into force. In this connection, it should be noted that on April 5, 1880, an Anglo-Roumanian Treaty of Commerce and Navigation was concluded, XV Hertslet, *Treaties and Conventions* (1885) 314, and that during his Roumanian negotiations, Schuyler familiarized himself with it. See, Brief for the United States as *Amicus Curiae*, submitted on the petition for certiorari herein, p. 10. So far as is pertinent here, the phraseology of the Anglo-Roumanian treaty is like that of the Convention, and the language of the first paragraph of Article I of the Anglo-Serbian treaty does not appear in it. It reappears, however, in the Anglo-Montenegrin Treaty of Friendship, Commerce and Navigation of January 21, 1882. XV Hertslet, *op. cit. supra*, 240. The Anglo-Serbian treaty of February 7, 1880, was, however, the earliest of the group, and would seem to have set the pattern, although it appears from the dispatch cited that the trademark provisions of the Convention's Article XII probably resulted from "precise instructions" from Washington.

Austrian models, that England and Italy have given up the capitulations, and that *there are few or no Americans residing in Serbia*, I think we could safely abandon all claims of consular jurisdiction * * *. [Emphasis supplied]

The construction of the Convention advanced by the petitioners is, thus, one which is supported by the Convention's background. Moreover, in negotiations with Yugoslavia for the protection of the property rights in that country of all Americans everywhere, the Executive relied on the Convention so construed, and so construed, the Convention has been accepted by the Congress, in enacting legislation, as protecting such rights. Yugoslavia, the other party bound by the Convention, has concurred with the Executive and the Congress in this construction. If construed as the Court below has construed it, the Convention would protect the property rights in Yugoslavia only of such Americans as may be in that country. In these circumstances, the construction for which the petitioners contend is entitled to great weight. *Sullivan v. Kidd*, *supra*, 254 U.S. at 442; *Charlton v. Kelly*, 229 U.S. 447, 468 (1913); *Factor v. Laubenheimer*, *supra*, 290 U.S. at 295; *Pigeon River Improvement, Slide & Boom Co. v. Charles W. Cox Ltd.*, 291 U.S. 138 (1934); *United States v. Reid*, 73 F.2d 153, 156 (9th Cir.) (1934), cert. denied 299 U.S. 544; American Law Institute, *Restatement of the Foreign Relations Law of the United States* (Tentative Draft No. 3, 1959) § 136. Unlike the construction adopted by the Court below, this construction is reasonable, it takes into account the context in which the disputed words appear, and gives effect to the express purpose of the Convention.

It should be held by this Court to be the Convention's proper construction.

POINT III

The Denial of Inheritance Rights to the Petitioners Because of the Existence in Yugoslavia of Foreign Exchange Controls Consistent With the International Monetary Fund Agreement, to Which Both the United States and Yugoslavia Are Parties. Is Inconsistent With Federal Policy Established by Federal Action Within the Exclusive Constitutional Competence of the Federal Government. Such Federal Policy Will Override State Policy Inconsistent Therewith.

Some sixty-eight nations, including the United States and Yugoslavia, are parties to the International Monetary Fund Agreement, and members of the International Monetary Fund which it established. International Monetary Fund, *Eleventh Annual Report, 1960*, vii-ix. The United States became a party to the Agreement and a member of the Fund pursuant to § 2 of the Bretton Woods Agreements Act, 59 Stat. 512, Tit. 22 U.S.C. § 286.

Article VI, § 3, of the Agreement in pertinent part provides, R 59, App. B, p. 3a, *infra*:

Members may exercise such controls as are necessary to regulate international *capital* movements, but no member may exercise these controls in a manner which will restrict payments for *current* transactions * * *. [Emphasis supplied]

Article XIV, § 2, of the Agreement in pertinent part provides, R 61, App. B, p. 4a, *infra*:

In the post-war transitional period members may, notwithstanding the provisions of any other articles of this Agreement, maintain and adapt to changing circumstances (and, in the case of members whose territories have been occupied by the

enemy, introduce where necessary) restrictions on payments and transfers for *current* international transactions. Members shall, however, have continuous regard in their foreign exchange policies to the purpose of the Fund; and, as soon as conditions permit, they shall take all possible measures to develop such commercial and financial arrangements with other members as will facilitate international payments and the maintenance of exchange stability. In particular, members shall withdraw restrictions maintained or imposed under this Section as soon as they are satisfied that they will be able, in the absence of such restrictions, to settle their balance of payments in a manner which will not unduly encumber their access to the resources of the Fund. [Emphasis supplied] ¹⁶

Under these provisions, all except a small minority of the signatories to the Agreement, members of the Fund, have maintained or imposed foreign exchange controls which vary in stringency and extent from country to country, and from time to time, in accordance with economic circumstances and needs. See, International Monetary Fund, *Eleventh Annual Report, 1960*, 1-12, and generally.

Inheritances are, of course, "capital", and under the Agreement, international transfers of inherited

¹⁶ Under Article XIV, § 4, a member maintaining or introducing controls under this provision, i.e., with respect to *current* transactions, must consult with the Fund periodically concerning them, and the Fund may require a member to withdraw any control it considers to be inconsistent with the Agreement. Recalcitrance invites ineligibility to use the resources of the Fund, or expulsion, as provided in Article XV, § 2. R 61, 62, App. B, pp. 4a, 5a, *infra*. There is no such provision with respect to restrictions on capital transfers imposed or maintained under Article VI, § 3.

funds are "capital transfers" over which members of the Fund "may exercise such controls as are necessary to regulate international capital movements", as Article VI, § 3, *supra*, specifically provides.¹⁷ Indeed, under Article VI, § 1, R 59, App. B, p. 3a, *infra*, members may be subject to sanctions under some circumstances, if they do not impose such controls. That the full significance of Article VI, § 3, of the Agreement was clearly understood is clear. Thus, in the course of the hearings on the bill to authorize the United States to become a party to the Agreement and a member of the Fund, the following colloquy occurred:

SENATOR TAFT. I would like to just read from Lord Keynes' statement on the subject:

¹⁷ Article XIV governs controls on "current transactions", as distinguished from "capital movements". Current transactions are defined in Article XIX, ¶ (i) as "payments . . . not intended for the purpose of transferring capital", such as payments incident to the purchase and sale of goods, payments of the net income on investments, including interest on loans, of moderate amounts for living expenses, etc. R 62, 63, App. B, pp. 5a, 6a, *infra*. Thus, in reporting on Yugoslavia's exchange controls, the Fund commented as follows under the heading "Capital", International Monetary Fund, *Eleventh Annual Report*, 1960, p. 352:

All transfers of a *capital* nature by residents or nonresidents are subject to individual license. . . . A Decision of the Yugoslav Federal Executive Council of October 14, 1955 *requires* the Yugoslav authorities to continue to permit the remittance of inheritances to citizens of the United States, provided that the remittance is requested within three years from the date of distribution of the estate. [Emphasis supplied]

The "Decision" referred to was rendered in connection with the transfer of the administration of the foreign exchange controls from one agency to another. The substantive ruling dates back to prior to 1953. R 21-23, 70.

Not merely as a feature of the transition but as a permanent arrangement, *the plan accords to every member government the explicit right to control all capital movements.* * * * In my own judgment, countries which avail themselves of this right may find it necessary to scrutinize all transactions, so as to prevent evasion of capital regulations. Provided that the innocent current transactions are let through, there is nothing in the plan to prevent this. In fact, it is encouraged. * * *

The point I want to make is that it seems to me *not only is it permitted to the government but, in order to carry out the functions of the fund, I think they have to control the capital movements* and will find it necessary, as Lord Keynes says, to scrutinize the transaction so as to prevent the evasion of capital regulations.

MR. ACHESON. I think you just happen to be wrong about that, Senator Taft. As Lord Keynes says, *it is right which is given to the country.* It is also something they may be called upon to do if there is flight of capital and if they still wish to come to the fund.¹⁸ [Emphasis supplied]

¹⁸ Hearings before the Senate Committee on Banking and Currency, on H.R. 3314, 79th Cong., 1st Sess., p. 32. Keynes acknowledged that "it is an objection to this [i.e., the right to restrict capital transfers] that control, if it is to be effective, probably requires the machinery of exchange control for *all* transactions * * *". Halm, *op. cit. supra*, p. 15, at 136. Put otherwise, the effective enforcement of exchange controls applicable to limited types of transactions, may require the scrutiny of all transactions. Yugoslavia apparently found this to be so. Thus, in response to an inquiry directed specifically to the transfer to the United States of the distributive shares of Americans in Yugoslav estates, Yugoslavia advised the United States on October 21, 1953, that "pursuant to paragraph 3, Art. II of the Agreement of 1881", i.e., the Convention, "it settles favorably all the claims of American citizens" in that regard. It was pointed out that although it was

Thus, while it may have been disputed whether the regulation of capital transfers would, as a practical matter, require the scrutiny of all transfers, there was complete accord that under the Agreement every member of the Fund would have the *right* freely to impose restrictions on capital transfers.

By becoming a party to the Agreement, and a member of the Fund, the United States, by the very terms of the Agreement itself, gave its recognition and acceptance to foreign exchange controls maintained or imposed consistently with the Agreement by other members of the Fund. Thus, Article VIII, § 2(b), of the Agreement in pertinent part provides, R 60, App. B, pp. 3a, 4a, *infra*:

Exchange contracts which involve the currency of any member and which are contrary to the exchange control regulations of that member maintained or imposed consistently with this Agreement shall be unenforceable in the territories of any member. * * *

Pursuant to its authority under Article XVIII of the Agreement, the Fund's Board of Executive Directors has interpreted this provision as follows:¹⁹

necessary under the regulations to apply for a permit to make a "free transfer" this was not "in contradiction with the Convention of 1881" since such transfers were unhindered in accordance with "paragraph 3, Art. II of the Agreement of 1881." R 46-48; 43-46. See, pp. 10-14, *supra*.

¹⁹ International Monetary Fund, *Annual Report, 1949*, App. XIV, pp. 82, 83; Federal Register, August 19, 1949, pp. 5208-9. Article XVIII provides; 60 Stat. at 1423, T.I.A.S. 1501, p. 25, in pertinent part:

(a) Any question of interpretation of the provisions of this Agreement arising between any member and the Fund

The meaning and effect of this provision are as follows:

1. Parties entering into exchange contracts involving the currency of any member of the Fund and contrary to exchange control regulations of that member which are maintained or imposed consistently with the Fund Agreement will not receive the assistance of the judicial or administrative authorities of other members in obtaining the performances of such contracts. That is to say, the obligations of such contracts will not be implemented by the judicial or administrative authorities of member countries, for example, by decreeing performance of the contracts or by awarding damages for their non-performance.

2. By accepting the Fund Agreement members have undertaken to make the principle mentioned above effectively part of their national law. * * *

An obvious result of the foregoing undertaking is that if a party to an exchange contract of the kind referred to in Article VIII, section 2(b) seeks to enforce such a contract, the tribunal of the member country before which the proceedings are brought will not, on the ground that they are contrary to the public policy * * * of the forum, refuse recognition of the exchange control regulations of the other member which are maintained or imposed consistently with the Fund Agreement. It also follows that such contracts will be treated as unenforceable notwithstanding that under the private international law of the forum, the law under which the foreign exchange control regulations are maintained or imposed is not the law

or between any members of the Fund shall be submitted to the Executive Directors for their decision * * *

For a discussion of this authority, see Gold, *The Interpretation by the International Monetary Fund of its Articles of Agreement*, 3 Int. & Comp. L.Q. 256 (1954).

which governs the exchange contract or its performance.

In other words, under the Agreement itself, every party to it has committed itself to recognize as valid, and to give effect to the foreign exchange regulations of other members of the Fund, which are consistent with the Agreement, and not to consider any such exchange regulations as offending against its public policy. And, in becoming a party to the Agreement and a member of the Fund, the United States *expressly* made that commitment, and assented to the *right* of members of the Fund under Article VI, § 3 of the Agreement, *supra*, p. 40, to impose restrictions on capital transfers, including inheritances of American citizens.

It is patently incompatible with the constitutional supremacy of federal policy and action within the competence of the federal government, for a state to deny the *right* of members of the Fund to restrict capital transfers, or to maintain other controls consistent with the Agreement, by refusing rights of inheritance, which they would otherwise have under its laws, to citizens of parties to the Agreement, members of the Fund, which maintain such controls. For, the federal government's action in becoming a party to the Agreement, and a member of the Fund, was clearly an exercise of its exclusive authority to conduct foreign affairs, and to regulate commerce with foreign nations and the value of money and foreign "coin".²⁰ The Agreement

²⁰ See *e.g.*, §§ 5, 14 Bretton Woods Agreements Act, 59 Stat. at 514, 517, Tit. 22 U.S.C. §§ 286c, 286k. See also, Articles I and IV of the Agreement, 60 Stat. at 1401, 1403, T.I.A.S. 1501 at pp. 1, 3.

is thus an expression and implementation of paramount federal policy, which necessarily will override any state policy which would be "an obstacle to the accomplishment and execution of the full purposes and objectives of Congress" in authorizing the United States to become a party to it. *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941); *Takahashi v. Fish and Game Commission*, 334 U.S. 410 (1948); *Oyama v. California*, 332 U.S. 633 (1948); *Bethlehem Steel Co. v. New York State Labor Relations Board*, 330 U.S. 767 (1947); *Hill v. Florida ex rel. Watson*, 325 U.S. 538 (1945); *Cf. Truax v. Raich*, 239 U.S. 33 (1915).

As an expression and implementation of paramount federal policy, the Agreement is of no less dignity or force than what was involved in *United States v. Pink*, 315 U.S. 203 (1942), and the application to these petitioners of the Oregon statute for the reason given by the Court below, is no less an attempt by a state to rewrite federal policy to conform to its domestic policy, than was the action of New York there condemned. *Perutz v. Bohemian Discount Bank*, 304 N.Y. 533, 110 N.E. 2d 6 (1953). Thus, in *Pink*, this Court said, 315 U.S. at 231, 232, 233:

Enforcement of New York's policy as formulated by the Moscow case would collide with and subtract from the Federal policy * * *. For the Moscow case refuses to give effect or recognition in New York to acts of the Soviet Government which the United States * * * agreed no longer to question. * * *

* * * Here we are dealing with an exclusive federal function. If state laws and policies did not yield before the exercise of the external powers of the United States, then our foreign policy might be

thwarted. * * * If state action ~~could~~ defeat or alter our foreign policy, serious consequences might ensue. * * *

* * * No state can rewrite our foreign policy to conform to its own domestic policies. Power over external affairs is not shared by the States; it is vested in the national government exclusively.

It would be no less frustrating of federal policy, constitutionally paramount, and no less fraught with serious international consequences, to permit each of the fifty states to penalize members of the Fund which exercise rights guaranteed to them by the Agreement with the express consent of the United States, by depriving their citizens, for that reason alone, of rights they would otherwise have under State laws. The United States, as we have seen, is committed to the proposition that foreign exchange restrictions imposed or maintained by members of the Fund consistently with the Agreement, do not offend against its public policy. But that commitment would be a hollow sham, more honored in the breach than the observance, if the fifty states were free to curtail rights under their laws of citizens of members of the Fund, because they maintain or impose such restrictions. That the United States has specifically consented to such restrictions by an international agreement expressly sanctioned by the Congress, necessarily precludes the states from considering them as so offending against their public policy as to entail a deprivation of rights. *Cf. Perutz v. Bohemian Discount Bank, supra.*

Nor is federal policy with respect to Yugoslavia's foreign exchange controls evidenced only by the Agreement. Thus, Article II of the Economic Cooperation

Agreement of 1952 between the United States and Yugoslavia, T.I.A.S. 2384,²¹ provides that

1. In order to achieve the maximum economic strength through the employment of assistance received from the Government of the United States of America, the Government of the Federal People's Republic of Yugoslavia will use its best endeavors:

* * *

(c) to assure the stability of its currency, the validity of its rate of exchange, and its internal financial stability.

This provision was included in such agreement in compliance with the express statutory requirement, Tit. 22 U.S.C. § 1513(b) (2), that foreign economic/cooperation agreements provide for the taking by the recipient country of

* * * financial and monetary measures necessary to stabilize its currency, establish or maintain a valid rate of exchange * * * and generally to restore or maintain confidence in its monetary system * * *

Obviously, such "endeavors" and "measures" must include, when appropriate to the achievement of the required ends, the regulation of foreign exchange transactions, particularly capital transfers.

Regardless of the effect²² of the foreign exchange controls that Yugoslavia maintains consistently with the Agreement, the holding of the Court below that

²¹ Entered into pursuant to Public Law 472, 80th Cong., as amended, 60 Stat. 137, Tit. 22 U.S.C. Sec. 1501 *et seq.*

²² *I.e.*, whether the controls apply to transfers to the United States of the distributive shares of Americans in Yugoslav estates. See, pp. 10-14, *supra*.

these petitioners may not inherit under Oregon's statute because of them; transgresses against paramount federal policy established by federal action within the competence of the federal government. Oregon's policy as reflected in paragraph (1)(b) of § 111.070 must yield to overriding federal policy.

CONCLUSION

The principal issue here involved is the meaning of Article II of the Convention. If, as the petitioners contend, Article II is properly to be construed as the Executive, the Congress and Yugoslavia have construed it—as applying to citizens of both countries without regard to their whereabouts—that will end the matter, for, then, the petitioners' rights of inheritance under the Convention will override all of Oregon's statute.

If, however, the decision on that issue should be adverse to the petitioners' contention, there will remain for decision the narrower issue as to the competence of Oregon to deny to these petitioners rights of inheritance they would otherwise have under its laws, solely because of the maintenance of foreign exchange controls consistent with the International Monetary Fund Agreement by the country of which they are citizens and residents. If the principal issue and this issue should both be determined contrary to the petitioners' contentions, that will also end the matter. However, if the principal issue should be determined adversely to the petitioners, but the narrower issue as they contend, there will remain for decision by the Court below, two issues under the Oregon statute which it expressly left undecided. R.104, 105; 349 P.2d at 268.

The consequences of this Court's decision on either or both of the two issues will necessarily be far-reaching. The first issue involves not only the right of these petitioners, and their fellow citizens, to inherit property in the United States, but the efficacy of the Convention's whole scheme for assuring property rights and civil rights in one country to citizens of the other. The second issue involves consequences not only for citizens and residents of the petitioners' country, but also for citizens and residents of the many members of the International Monetary Fund which maintain foreign exchange controls consistent with the Agreement.

The decrees of the Court below should be reversed.

Respectfully submitted,

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APPENDIX

APPENDIX A

[R 54-57]

CONVENTION BETWEEN THE UNITED STATES OF AMERICA AND
SERBIA, FOR FACILITATING AND DEVELOPING COMMERCIAL
RELATIONS.

The United States of America and His Highness the Prince of Serbia, animated by the desire of facilitating and developing the commercial relations established between the two countries, have determined with this object to conclude a treaty, and have named * * * their respective plenipotentiaries * * *

Who * * * have agreed upon and concluded the following articles:

ARTICLE II.

In all that concerns the right of acquiring, possessing or disposing of every kind of property, real or personal, citizens of the United States in Serbia and Serbian subjects in the United States, shall enjoy the rights which the respective laws grant or shall grant in each of these states to the subjects of the most favored nation.

Within these limits, and under the same conditions as the subjects of the most favored nation, they shall be at liberty to acquire and dispose of such property, whether by purchase, sale, donation, exchange, marriage contract, testament, inheritance, or in any other manner whatever

They shall likewise be at liberty to export freely the proceeds of the sale of their property, and their goods in general * * *

ARTICLE III.

Merchants, manufacturers, and trades people * * * of one of the two contracting countries traveling in the other, or sending thither their clerks and agents—whether with or without samples—* * * for the purpose of making purchases or sales * * * shall be treated with regard

to their licenses, as the merchants, manufacturers and trades people of the most favored nation. * * *

ARTICLE IV.

Citizens of the United States in Serbia and Serbian subjects in the United States shall be reciprocally exempted from all personal service, whether in the army by land or by sea * * *

They shall have reciprocally free access to the courts of justice on conforming to the laws of the country, both for the prosecution and for the defence of their rights in all the degrees of jurisdiction established by the laws. They can employ in every case advocates, lawyers and agents of all classes authorized by the law of the country, and shall enjoy in this respect, and as concerns domiciliary visits to their houses, manufactories, warehouses or shops, the same rights and advantages as are or shall be granted to the natives of the country, or to the subjects of the most favored nation. * * *

ARTICLE VII.

The products of the soil or of the industry of Serbia which shall be imported into the United States of America, and the products of the soil or of the industry of the United States which shall be imported into Serbia, and which shall be destined for consumption in the country, for warehousing, for re-exportation or for transit, shall be subjected to the same treatment, and shall not be liable to other or higher duties than the products of the most favored nation.

Done * * * this 2-14 day of October, 1881.

EUGENE SCHUYLER

*CH. MIJATOVICH

APPENDIX B

[R 57-63]

INTERNATIONAL MONETARY FUND AGREEMENT

ARTICLE VI. CAPITAL TRANSFERS

SECTION 1. *Use of the Fund's resources for capital transfers.*—(a) A member may not make net use of the Fund's resources to meet a large or sustained outflow of capital, and the Fund may request a member to exercise controls to prevent such use of the resources of the Fund. If, after receiving such a request, a member fails to exercise appropriate controls, the Fund may declare the member ineligible to use the resources of the Fund.

SEC. 2. *Special provisions for capital transfers.* * * *

SEC. 3. *Controls of capital transfers.*—Members may exercise such controls as are necessary to regulate international capital movements, but no member may exercise these controls in a manner which will restrict payments for current transactions or which will unduly delay transfers of funds in settlement of commitments, except as provided in Article VII, Section 3 (b), and in Article XIV, Section 2.

ARTICLE VIII. GENERAL OBLIGATIONS OF MEMBERS

SECTION 1. *Introduction.*—In addition to the obligations assumed under other articles of this Agreement, each member undertakes the obligations set out in this Article.

SEC. 2. *Avoidance of restrictions on current payments.*

(b) Exchange contracts which involve the currency of any member and which are contrary to the exchange control regulations of that member maintained or imposed consistently with this Agreement shall be unenforceable in the territories of any member. In addition, members

may, by mutual accord, co-operate in measures for the purpose of making the exchange control regulations of either member more effective, provided that such measures and regulations are consistent with this Agreement.

. . .

ARTICLE XIV. TRANSITIONAL PERIOD

SECTION 1. *Introduction.* . . .

SEC. 2. *Exchange restrictions.*—In the post-war transitional period members may, notwithstanding the provisions of any other articles of this Agreement, maintain and adapt to changing circumstances (and, in the case of members whose territories have been occupied by the enemy, introduce where necessary) restrictions on payments and transfers for current international transactions. Members shall, however, have continuous regard in their foreign exchange policies to the purposes of the Fund; and, as soon as conditions permit, they shall take all possible measures to develop such commercial and financial arrangements with other members as will facilitate international payments and the maintenance of exchange stability. In particular, members shall withdraw restrictions maintained or imposed under this Section as soon as they are satisfied that they will be able, in the absence of such restrictions, to settle their balance of payments in a manner which will not unduly encumber their access to the resources of the Fund.

SEC. 3. *Notification to the Fund.* . . .

SEC. 4. *Action of the Fund relating to restrictions.*—Not later than three years after the date on which the Fund begins operations and in each year thereafter, the Fund shall report on the restrictions still in force under Section 2 of this Article. Five years after the date on which the Fund begins operations, and in each year thereafter, any member still retaining any restrictions inconsistent with Article VIII, Sections 2, 3, or 4, shall consult the Fund as to their further retention. The Fund may,

if it deems such action necessary in exceptional circumstances, make representations to any member that conditions are favorable for the withdrawal of any particular restriction, or for the general abandonment of restrictions, inconsistent with the provisions of any other article of this Agreement. The member shall be given a suitable time to reply to such representations. If the Fund finds that the member persists in maintaining restrictions which are inconsistent with the purposes of the Fund, the member shall be subject to Article XV, Section 2 (a).

SEC. 5. *Nature of transitional period.*—In its relations with members, the Fund shall recognize that the post-war transitional period will be one of change and adjustment and in making decisions on requests occasioned thereby which are presented by any member it shall give the member the benefit of any reasonable doubt.

ARTICLE XV. WITHDRAWAL FROM MEMBERSHIP

SECTION 1. *Right of members to withdraw.* . . .

SEC. 2. *Compulsory withdrawal.*—(a) If a member fails to fulfill any of its obligations under this Agreement, the Fund may declare the member ineligible to use the resources of the Fund. . . .

(b) If, after the expiration of a reasonable period the member persists in its failure to fulfill any of its obligations under this Agreement . . . that member may be required to withdraw from membership in the Fund . . .

ARTICLE XIX. EXPLANATION OF TERMS

In interpreting the provisions of this Agreement the Fund and its member shall be guided by the following:

(i) Payments for current transactions means payments which are not for the purpose of transferring capital, and includes, without limitation:

- (1) All payments due in connection with foreign trade, other current business, including services, and normal short-term banking and credit facilities;
- (2) Payments due as interest on loans and as net income from other investments;
- (3) Payments of moderate amount for amortization of loans or for depreciation of direct investments;
- (4) Moderate remittances for family living expenses.

The Fund may, after consultation with the members concerned, determine whether certain specific transactions are to be considered current transactions or capital transactions.

* * *

APPENDIX C

[R 83-84]

Oregon Revised Statutes

Section 114.070

(1) The right of an alien not residing within the United States or its territories to take either real or personal property or the proceeds thereof in this state by succession or testamentary disposition, upon the same terms and conditions as inhabitants and citizens of the United States, is dependent in each case:

(a) Upon the existence of a reciprocal right upon the part of citizens of the United States to take real and personal property and the proceeds thereof upon the same terms and conditions as inhabitants and citizens of the country of which such alien is an inhabitant or citizen;

(b) Upon the rights of citizens of the United States to receive by payment to them within the United States or its territories money originating from the estates of persons dying within such foreign country; and

(c) Upon proof that such foreign heirs, distributees, devisees or legatees may receive the benefit, use or control of money or property from estates of persons dying in

this state without confiscation, in whole or in part, by the governments of such foreign countries.

(2) The burden is upon such nonresident alien to establish the fact of existence of the reciprocal rights set forth in subsection (1) of this section.

(3) If such reciprocal rights are not found to exist and if no heir, devisee or legatee other than such alien is found eligible to take such property, the property shall be disposed of as escheated property.

APPENDIX D

The Secretary of State presents his compliments to the Charge d'Affaires ad interim of the Federal People's Republic of Yugoslavia and acknowledges the receipt of the Embassy's note No. 4298 of April 18, 1958, regarding the interpretation of Article II of the Convention for Facilitating and Developing Commercial Relations (sometimes called the Convention of Commerce and Navigation), concluded on October 2/14, 1881 between the United States of America and Serbia and presently in force between the United States of America and Yugoslavia. (22 Statutes at Large 963, Treaty Series 319.)

According to the Embassy's note, the Government of Yugoslavia considers that, by virtue of Article II of the 1881 Convention, citizens of the United States are entitled to most-favored nation treatment with respect to the acquisition, possession, or disposition of property in Yugoslavia whether they reside in Yugoslavia or elsewhere and, in the case of inheritance, regardless of the decedent's nationality. With particular reference to inheritance, the Embassy states that, in accordance with this construction of Article II of the 1881 Convention, United States citizens, regardless of their residence or of the decedent's nationality, are entitled to and do actually enjoy the same rights as Yugoslav nationals with respect to the inheritance of property in Yugoslavia. This, as the note points out, is in consequence of the fact that United States citi-

zens, wherever resident, are accorded in Yugoslavia treatment no less favorable than that accorded in Yugoslavia to nationals of Poland under Article 23 of the Treaty Regarding Legal Relations concluded on May 4, 1923 between Yugoslavia and Poland, whereby Polish nationals, irrespective of their residence, are accorded national treatment (that is, the same treatment as Yugoslav nationals) in regard to the succession to and possession of property in Yugoslavia.

The Embassy's note cites Article IX of the Treaty of Friendship, Commerce and Navigation of July 27, 1853 between the United States of America and Argentina, which contains a national-treatment provision similar in substance to the provision in Article 23 of the 1923 treaty between Yugoslavia and Poland. The note indicates that, by the application of such provision together with the most-favored-nation provision in Article II of the 1881 Convention, Yugoslav nationals are entitled to and should be accorded, whether they reside in the United States or elsewhere and regardless of the decedent's nationality, the right to acquire, possess, or dispose of property in the United States.

The Embassy's note further states that the Yugoslav Government, pursuant to the third paragraph of Article II of the 1881 Convention, accords to American citizens, wherever they reside, the right to withdraw and have transferred to them moneys due them by inheritance from decedents' estates located in Yugoslavia or moneys derived from the sale of inherited property in Yugoslavia.

The Embassy's note called attention to the agreement of July 19, 1948 between the United States of America and Yugoslavia regarding the settlement of pecuniary claims against Yugoslavia, and particularly to Article 5 of that agreement which has the effect of confirming that Article II of the 1881 Convention is interpreted as according rights in regard to property in one or the other of the two countries irrespective of the place of residence of the nationals concerned or of the decedent's nationality.

The Embassy's note inquired whether the United States Government concurs with the Yugoslav Government's interpretation of Article II of the 1881 Convention, particularly as applied to the rights of Yugoslav nationals who do not reside in the United States. It appears that the Embassy's inquiry is prompted by indications that some State attorneys general in the United States are tending toward the adoption of a contrary view. The note refers to a statement by the Supreme Court of California in the case of *In re Arbulich's Estate*, 41 Cal. 2d 86, 257 P. 2d 433, certiorari denied, 346 U.S. 897 (1953).

It is well to bear in mind a general principle applied in the United States, namely, that although an expression of opinion by the Department of State with respect to the interpretation of a treaty provision will normally be given considerable weight by the courts, such an expression of opinion is not binding on the courts.

The Department of State concurs in the Yugoslav interpretation of Article II of the 1881 Convention. That is to say, it is the opinion of the Department that Article II provides that whatever right is accorded in this country to nationals of any third country, wherever resident, with respect to the acquisition, possession, or disposition of property (including the rights of inheritance and transfer of proceeds thereof), shall be accorded likewise in this country to Yugoslav nationals wherever resident and irrespective of the decedent's nationality. The Embassy's citation of the 1853 treaty between the United States of America and Argentina in connection with this matter appears to be appropriate.

Article II of the 1881 Convention is quoted in the Embassy's note, so it will not be set forth here. The critical words "citizens of the United States in Serbia and Serbian subjects in the United States shall enjoy [certain rights]" as they appear in the first paragraph of Article II may be given at least two plausible interpretations, namely: (1) The words "in Serbia" and "in the United States" may be deemed adjectival, modifying respectively

"citizens of the United States" and "Serbian subjects".

(2). The words "in Serbia" and "in the United States" may be deemed adverbial, modifying "shall enjoy". The first of these interpretations would limit the application of the article to the rights of nationals of the one country present in the other. However, a literal reading of the pertinent phraseology in context does not require such a restrictive interpretation. Rather, a liberal interpretation of the ambiguous portion produces a reasonable construction consonant with the spirit of the Treaty as a whole.

Under the first, or restrictive interpretation, an American citizen residing in Yugoslavia would be accorded under the most-favored-nation provision whatever rights in respect of the acquisition, possession, or disposition of property in Yugoslavia were accorded to nationals of a third country (for example, Poland under the 1923 treaty which the note cites) who were resident therein. However, American citizens outside Yugoslavia would not be accorded rights similar to rights under Yugoslav law enjoyed by Polish nationals who were not resident therein.

A review of the negotiating history of the 1881 Convention discloses nothing which supports the theory that the Governments of the United States and Serbia intended to provide that only some and not all of the nationals of the respective countries would be entitled to most-favored-nation treatment with respect to the acquisition, possession, and disposition of property. In this connection, it appears to have been the consistent policy of the United States, as reflected in treaties concluded between 1850 and 1890, to accord rights of inheritance and succession to property to nationals of the other contracting party without regard to their residence at the time of the decedent's death.

As stated in the preamble thereto, the 1881 Convention was entered into for the purpose of "facilitating and developing the commercial relations established between the two countries". The restrictive view would probably produce results inconsistent with this purpose. For example,

a national of one country, also resident therein, wishing to make an *inter vivos* disposition of property belonging to him and located in the other country would have been required to make the long and then arduous trip to the other country to effect the disposition. It seems equally inconsistent with the expressed purpose of the Convention to make an alien's rights of inheritance turn on his location at the time of decedent's death.

Therefore, in the absence of clear and unmistakable evidence of a contrary intention on the part of the negotiators, it appears that the interpretation most consistent with the purpose of the Convention, and with the policy reflected in treaties between the United States of America and other countries, is to interpret the words "in Serbia" and "in the United States" as referring to the place where property rights are granted rather than to the geographical location of the person claiming such rights. As thus construed, the provision would accord to nationals of either party *wherever resident* rights similar to those enjoyed by nationals of the most-favored-nation *wherever resident*. A review of all relevant correspondence available at the National Archives indicates no intention contrary to this interpretation. As the Supreme Court has said:

"Treaties are to be construed in a broad and liberal spirit, and, when two constructions are possible, one restrictive of rights that may be claimed under it and the other favorable to them, the latter is to be preferred. *Hauenstein v. Lynham*, 100 U.S. 483, 487; *Geofroy v. Riggs*, *supra*, 271; *Tucker v. Alexandroff*, 183 U.S. 424, 437." *Asakura v. Seattle*, 265 U.S. 332, 342 (1924).

This note, of course, is not to be considered as having the character of an international agreement or as effecting any modification of the treaty.

Department of State,

Washington, April 24, 1958.

211.683/4-1858

No. 4298

The Ambassador of the Federal People's Republic of Yugoslavia presents his compliments to the Honorable the Secretary of State and, in accordance with talks held between representatives of the Yugoslav Embassy and representatives of the Department of State, has the honor to inform the Honorable the Secretary of State that in the United States there have in the post-war period been various interpretations of Article II of the "Convention for Facilitating and Developing Commercial Relations" concluded between Serbia and the United States on October 2/14, 1881, (also commonly called the Convention of Commerce and Navigation of 1881, Treaty Series 319, 22 Stat. 936, 2 Malloy's Treaties, etc. [sic] 1613). The governments of the Federal People's Republic of Yugoslavia and of the United States of America recognize that this Convention has at all times been and is now in force between Yugoslavia and the United States. Article II of the Convention reads in the English text as follows:

"In all that concerns the right of acquiring, or possessing or disposing of every kind of property, real or personal, citizens of the United States in Serbia and Serbian Subjects in the United States, shall enjoy the rights which the respective laws grant or shall grant in each of these states to the subjects of the most favoured nation."

"Within these limits, and under the same conditions as the subjects of the most favoured nation, they shall be at liberty to acquire and dispose of such property, whether by purchase, sale, donation, exchange, marriage, contract, testament, inheritance, or in any other manner whatever, without being subject to any taxes, imposts or charges whatever, other or higher than those which are or shall be levied on natives or on the subjects of the most favoured nation."

"They shall likewise be at liberty to export freely the proceeds of the sale of their property and their goods in general, without being subjected to pay any other or higher duties than those payable under similar circumstances by natives or by the subjects of the most favoured state."

In the period since 1945 there have been cases in which Article II of the Convention of Commerce and Navigation of 1881, when applied in the United States, was interpreted as if it did not sufficiently bear out reciprocal rights of inheritance between the citizens of the Federal People's Republic of Yugoslavia and the citizens of the United States of America. According to the interpretations (particularly a statement by the Supreme Court of California in the case *In re Arbulich Estate*, 41 Cal. 2d 86, 257 P. 2d 433 and statements of some State attorneys general), the provisions of the Convention allegedly cannot be applied to those decedents' estates, the decedent of which is an American citizen who has left property in the United States to a Yugoslav citizen residing in Yugoslavia. According to such an interpretation, the acquisition of property by inheritance, pursuant to the provision of the most-favoured-nation clause in Article II of the Convention, encompasses only those citizens of Yugoslavia actually and physically living, sojourning or residing within the borders of the United States regardless of the decedent's citizenship. On the other hand, according to such an interpretation, the Yugoslav citizens permanently residing within the borders of Yugoslavia cannot inherit property left them by a resident of the United States, although the heirs are in most cases the closest relatives of the decedent's—his parents, spouse, children, brothers, sisters, etc. And vice versa, the corresponding should, then, apply as regards the inheritance rights of American citizens in Yugoslavia.

Such an interpretation, however, is directly contrary to the past and present interpretation of the Yugoslav courts and authorities, who always have been applying the provisions of Article II of the Convention so that by virtue thereof the American citizens are entitled to acquire property by inheritance, testamentary disposition or intestate succession, or by transfer, regardless of whether they are permanently residing in the United States of America, or anywhere else, as well as regardless of whether the dece-

dent is a citizen of Yugoslavia, the United States or any third country. This can be clearly deduced from many a decision of the Yugoslav courts, who have been applying and interpreting Article II of the Convention exclusively in the above sense.

In Article 23 of the Convention of Legal Relations between Yugoslavia and Poland, concluded on May 4, 1923, (85 League of Nations Treaty Series 455) the two contracting parties extended rights of inheritance to the nationals of the other as follows:

“The nationals of either Contracting Party shall be allowed, on the same conditions as nationals of the country to succeed or to take possession of property passing to them in the territory of the other Contracting Party by operation of law or in virtue of testamentary disposition.”

It is the construction of the Yugoslav Government that under the most-favoured-nation clause of Article II of the Convention of 1881 citizens of the United States regardless of their whereabouts or residence have had extended to them and are entitled to enjoy the same rights of inheritance from decedents' estates and of property located in Yugoslavia as nationals of Yugoslavia themselves, and regardless of whether the decedent was a citizen of Yugoslavia, the United States of America or any third country.

As regards the application of the most-favoured-nation clause to the rights of the Yugoslav citizens, regardless of their permanent residence, to acquire property and to inherit estates in the United States, it is clearly explained, for example, by Article IX of the Treaty of Friendship, Commerce and Navigation between the United States and Argentina, signed at San Jose on July 27, 1853 (10 Stat. /Pt. 2, Public Treaties/ 16 Treaty Series 4, I Treaties /Malloy/ 20):

“In whatever relates to the police of the ports, the lading and unlading of ships, the safety of the merchandise, goods and effects, and to the acquiring and disposing of property of every sort and denomination,

either by sale, donation, exchange, testament or in any other manner whatsoever, as also to the administration of justice, the citizens of the two contracting parties shall reciprocally enjoy the same privileges, liberties and rights, as native citizens: and they shall not be charged, in any of those respects, with any higher imposts or duties than those which are paid or may be paid, by native citizens, submitting, of course, to the local laws and regulations of each country respectively. If any citizen of either of the two contracting parties shall die without will or testament, in any of the territories of the other, the Consul-General or Consul of the nation to which the deceased belonged, or the representative of such Consul-General or Consul, in the absence, shall have the right to intervene in the possession, administration and judicial liquidation of the estate of the deceased, conformably with the laws of the country, for the benefit of the creditors and legal heirs."

This treaty unequivocally grants Argentine citizens the same rights of inheritance as native citizens in the United States, in the same manner as the right is granted to the Yugoslav citizens by the treaty between Poland and Yugoslavia. It will be observed that in substance the 1853 treaty with Argentina is very similar to the 1923 treaty between Poland and Yugoslavia.

It is further the construction of the Yugoslav Government that by virtue of the most-favoured-nation clause and the third [*sic*] subparagraph of Article II of the Convention of 1881, American citizens, wherever they may physically be or permanently reside, have and must be accorded the right to withdraw and export, i.e. have transferred to them upon request to the United States or wherever they may direct, moneys due them by inheritance from decedents' estates located in Yugoslavia or moneys derived from the sale of inherited property in Yugoslavia.

The interpretation of the Yugoslav Government is also based on the spirit and intentions stated in the preamble to the Convention of Commerce and Navigation of 1881,

as well as on the basis of the needs resulting from the relations which prevailed at that time between the two countries.

It is apparent, therefore, that the construction of the treaty adopted by the Supreme Court of California in *Re Arbulich Estate* is not in accord with the understanding of the Yugoslav Government concerning the meaning and the effect of Article II of the Convention of 1881. This construction requires that there be twice read into the language the word "residing" or at least the word "sojourning" so the clause could read "citizens of the United States residing (or sojourning) in Serbia and Serbian citizens residing (or sojourning) in the United States". It requires no addition of words in the treaty to rephrase from Victorian into modern English what was beyond doubt the intention of the treaty-makers as to the persons to be covered by the treaty.

Article 5 of the "Agreement Between the Government of the United States of America and the Federal People's Republic of Yugoslavia Regarding Pecuniary Claims of the United States and its Citizens", concluded on July 19, 1948, (Treaty Series No. 1803, 62 Stat. 2133) provides as follows:

"The Government of Yugoslavia agrees to accord to nationals of the United States lawfully continuing to hold, or hereafter acquiring assets in Yugoslavia, the right and privileges of using and administering such assets and the income therefrom within the framework of the controls and regulations of the Government of Yugoslavia, on conditions not less favourable than the rights and privileges accorded to nationals of Yugoslavia or of any other country, in accordance with the Convention of Commerce and Navigation between the United States of America and the Prince of Serbia, signed at Belgrade, October 2/14, 1881."

It is evident that both Parties have confirmed thereby that Article II of the Convention of 1881 is to be interpreted to the effect that the citizens of one contracting

party shall have the most-favoured-nation treatment when acquiring property in the territory of the other, regardless of the heir's residence or the decedent's citizenship. This joint interpretation (reached by both contracting parties) confirms the already reached concurrence on the existence of the rights of American citizens in Yugoslavia (and accordingly of the Yugoslav citizens in the United States of America) to acquire property (and accordingly to inherit) by virtue of Article II of the Convention of 1881, regardless of the heir's residence and the decedent's citizenship.

The Commission for Interpreting of Laws of the National Assembly of the Federal People's Republic of Yugoslavia issued on August 3, 1953, and the National Assembly subsequently confirmed, a binding interpretation, as follows:

"According to Article 5 of the Agreement between the Government of the United States of America and the Federal People's Republic of Yugoslavia regarding Pecuniary Claims of the United States of America and its Citizens, concluded on July 19, 1948, and the provisions of Article II of the Convention of Commerce and Navigation between Serbia and the United States of America, concluded on October 2/14, 1881, which is still in force, citizens of the United States of America are equal with citizens of the Federal People's Republic of Yugoslavia in regard to the manner and object of acquiring and disposing of both personal and real property. Accordingly, they have the right to inherit real property in the territory of the Federal People's Republic of Yugoslavia under the same conditions as citizens of the Federal People's Republic of Yugoslavia on the basis of the Law, as well as on the basis of a Testament, regardless of the provision of Article 5, paragraph 1 of the Decree regarding the Control of Transfers of Real Property, of March 20, 1948."

In the note of the Secretariat of State for Foreign Affairs of Yugoslavia No. 515370/53 of October 21, 1953, to the American Embassy in Belgrade, in response to the

American Embassy's note No. 1368 of May 21, 1953, unqualified assurances were given by the Yugoslav Government that it considers citizens of the United States, regardless of their whereabouts or residence, to have full reciprocal rights of inheritance in decedents' estates located in Yugoslavia on the basis of Article II of the Convention between Serbia and the United States of 1881, as confirmed by Article 5 of the Agreement on Pecuniary Claims of the United States and its Citizens, concluded on July 19, 1948.

The Attorneys General of both Oregon and California, which enacted the so-called reciprocal inheritance rights statutes in the years 1937 and 1941 respectively, issued opinions that reciprocal inheritance rights existed between Yugoslavia and the United States in the manner required by their statutes by virtue of Article II of the Convention between Serbia and the United States of 1881. The opinion of the Honorable I. H. Van Winkle, Attorney General of Oregon, is in the 1938-1940 volume of the Opinions of the Attorneys General at page 136, that of the Honorable Earl Warren, Attorney General of California, is No. 1 NS 4451 dated July 15, 1942, from which the following is quoted:

"Class 2. Where the same or reciprocal rights in the matter of acquiring and holding all kinds of property in any manner whatsoever are not granted to the citizens of the respective parties to the treaty in those specific words, but are in effect so granted by conferring such rights upon those citizens which the respective laws grant or shall grant in each of the states to the subjects of the most-favoured-nation, and under the same conditions as the subjects of the most-favoured-nation."

"In the class is Yugoslavia (the Treaty applying also to Serbia and the Kingdom of the Serbs, Croats and Slovenes) the citizens of which are entitled, by virtue of the reference provisions of such Treaty, to the same rights as those enjoyed by the citizens of Argentina."

In substantiation of the fact that Yugoslavia has always meticulously performed and carried out the obligations which, under its construction of the Convention, are due American citizens heirs or beneficiaries of estates and property in Yugoslavia, reference may be made to the Department's note of December 26, 1957, in response to this Embassy's note of November 4, 1957, No. 4693, wherein the Department stated:

"In the light of the foregoing, the Embassy is informed that the Department has not been apprised of any instance where an American citizen has not been permitted to inherit or succeed by will or otherwise to property from an estate in Yugoslavia, or, after having duly made application therefor, has not been granted permission to transfer his inheritance of the proceeds of sale thereof to the United States in dollars."

In view of the foregoing, the Government of the Federal People's Republic of Yugoslavia would appreciate being advised of the opinion of the Government of the United States on the following:

Whether it concurs with the construction of the Yugoslav Government that it was the treaty-making intention of both contracting parties in negotiating and concluding Article II of the Convention for Facilitating and Developing Commercial Relations of 1881 and Article 5 of the Agreement between the Government of the United States of America and the Federal People's Republic of Yugoslavia regarding Pecuniary Claims of the United States and its Citizens of 1948 to safeguard the inheritance rights of American citizens and to ensure the transfer of the proceeds accruing thereof, regardless of their permanent residence, encompassing therefore also those American citizens residing in the United States, and reversely, whether it concurs with the construction of the Yugoslav Government that it was the treaty-making intention of both contracting parties in negotiating and concluding Article II of the Convention of 1881 and Article 5 of the Agree-

ment of 1948, to safeguard the inheritance rights of Yugoslav citizens and to ensure the transfer of the proceeds accruing thereof, regardless of their permanent residence, encompassing therefore also those residing in Yugoslavia!

The Yugoslav Ambassador avails himself of this opportunity to renew to the Honorable the Secretary of State the assurances of his highest consideration.

Washington, D. C., April 18, 1958.

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JAMES R. BROWNING, Clerk

No. 102

In the Supreme Court of the United States

OCTOBER TERM, 1960

**ANDJA KOLOVRAT, ET AL., AND ALSO BRANKO KARADZOLE,
CONSUL GENERAL OF YUGOSLAVIA AT SAN FRANCISCO,
CALIFORNIA, PETITIONERS**

v.

**STATE OF OREGON, ACTING BY AND THROUGH THE STATE
LAND BOARD**

**ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE
STATE OF OREGON**

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

J. LEE BANKIN,

Solicitor General,

GEO. S. LEONARD,

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In the Supreme Court of the United States

OCTOBER TERM, 1960

No. 102

**ANDJA KOLOVRAT, ET AL., AND ALSO BRANKO KARADZOLE,
CONSUL GENERAL OF YUGOSLAVIA AT SAN FRANCISCO,
CALIFORNIA, PETITIONERS**

v.

**STATE OF OREGON, ACTING BY AND THROUGH THE STATE
LAND BOARD**

**ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE
STATE OF OREGON**

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

OPINIONS BELOW

The Circuit Court of the State of Oregon for the County of Multnomah rendered no opinion. Its orders denying the petitions of the State of Oregon for the escheat of the property involved and directing that distribution be made (R. 76-81) are not reported. The opinion of the Supreme Court of the State of Oregon (R. 82-105) is reported at 349 P. 2d 255.

JURISDICTION

The judgments of the Supreme Court of the State of Oregon were entered on January 13, 1960. A timely motion for a rehearing was filed by petitioners on February 26, 1960, and was denied on March 1, 1960. The petition for a writ of certiorari was filed on May 26, 1960, and granted on October 10, 1960, 364 U.S. 812. The jurisdiction of this Court rests upon 28 U.S.C. 1257(3).

QUESTIONS PRESENTED

1. Whether, under the terms of Article II of the Convention Between The United States of America and Serbia, For Facilitating And Developing Commercial Relations, of 1881, now in force between the United States and Yugoslavia, a citizen of one of the contracting parties, domiciled in the country of his citizenship, has the right to acquire by inheritance property within the other country.

2. Whether the foreign exchange laws of Yugoslavia would preclude an American citizen domiciled in the United States from obtaining the benefit of inherited property located in Yugoslavia.

STATUTES AND TREATIES INVOLVED

The relevant provisions of the Oregon Revised Statutes, the Yugoslav Laws Regulating Payment Transactions with Foreign Countries, the Treaty Between the United States of America and Serbia, For Facilitating and Developing Commercial Relations of October 2/14, 1881, the Articles of Agreement of the International Monetary Fund of December 27, 1945, and the Agreement Between the Governments

of the United States of America and the Federal People's Republic of Yugoslavia Regarding Pecuniary Claims of the United States and its Nationals of 1948, are set forth in Appendix A, *infra*, pp. 34-40.

STATEMENT

Joe Stoich and Murharek Zekich died intestate in Oregon in December 1953, leaving certain heirs and next-of-kin resident and domiciled in Yugoslavia who, along with the Consul General of Yugoslavia, are the petitioners in this Court. Acting under Section 111.070 of the Oregon Revised Statutes, *infra*, pp. 34-35, the State of Oregon filed petitions in the Circuit Court of Oregon for the County of Multnomah for the escheat of the estate. The basis of the claim of escheat was that petitioners had no right in the respective estates and that there were no other heirs.

The Circuit Court, holding that the burden of proving the presence of reciprocity required by the Oregon statute has been met, issued orders denying the petitions of the State and directed that distribution be made (R. 76-81). The Supreme Court of Oregon reversed (R. 105-107). It held (1) that Article II of the Convention Between the United States and Serbia, For Facilitating and Developing Commercial Relations, of 1881, 22 Stat. 963, *infra*, pp. 36-37, now in force between the United States and Yugoslavia, does not apply to the estate of a United States citizen who dies intestate in the United States leaving heirs or next-of-kin who are Yugoslav subjects residing in Yugoslavia; and (2) that, regardless of the adherence of the United States and Yugoslavia to the Articles

of Agreement of the International Monetary Fund, 60 Stat. 1401, T.I.A.S. 1501, *infra*, pp. 37-39, the foreign exchange controls existing in Yugoslavia as of the date of the decedents' deaths prevented petitioners from meeting the burden of showing the right of an American citizen to receive payment in money from a Yugoslav estate (R. 104-105).

INTEREST OF THE UNITED STATES

The decision of the Supreme Court of Oregon is in direct conflict with the construction which has been consistently placed upon the Convention Between the United States of America and Serbia, For Facilitating and Developing Commercial Relations, of 1881, by the Department of State and the Yugoslav Government. It is in the interest of the United States that the construction agreed upon by both contracting parties be maintained.¹ Further, there are similar treaties existing between the United States and other countries.

SUMMARY OF ARGUMENT

I.

The court below erred in holding that the Serbian Convention of 1881, now in force between the United States and Yugoslavia, did not grant rights of inheritance to a Yugoslav resident and domiciliary where the intestate was a United States citizen who died resident in the State of Oregon.

¹ The Yugoslav Government has called the attention of the Department of State to the decision of the court below (see App. B, *infra*, pp. 60-62).

A. The Convention of 1881 admits of two possible constructions, one restrictive and one liberal, with respect to the scope of the inheritance rights granted thereby. It is established that, in such circumstances, the more liberal construction is to be preferred. Moreover, the restrictive reading given to it by the court below is contrary to the position of both the State Department and the Yugoslav Government. It is their view that the Convention grants reciprocal rights of inheritance to the citizens and subjects of the two countries, regardless of where they reside. In the absence of compelling evidence that the consistent interpretation of the contracting parties is not in accord with the intent of the negotiators or the meaning of the Convention, the court below was obliged to give it effect.

B. The background of the 1881 Convention reflects that the construction of the contracting parties, rather than that of the court below, is the one intended at the time of negotiations. The Convention was one of a number of commercial treaties consummated during the second half of the Nineteenth Century. The provisions of these other treaties, together with the diplomatic correspondence relating to them and to the Serbian Convention, show a clear intent to provide for rights of inheritance founded upon extended principles of reciprocity, and regardless of residence. Also, the fact that the Serbian Convention provides for "most favored nation" treatment indicates that such was the intention of the signatories. The recent diplomatic correspondence between the

State Department and the Yugoslav Government concerning the scope of the Convention gives recognition to its history.

1. The Serbian Convention was preceded by treaties contracted by the United States with France and Argentina which granted liberal rights of inheritance independent of the place of residence of the devisee, legatee or heir. And the correspondence in connection with the execution of these treaties suggests a general purpose to establish such reciprocal rights. Furthermore, by reason of the "most favored nation" clauses included in the Serbian Convention, it is clear that no less rights than those afforded the citizens of Argentina and France were granted by the provisions in question.

2. Since the Serbian Convention was negotiated contemporaneously with one with Roumania, the correspondence relating to the latter is particularly pertinent. This Roumanian correspondence reveals that the negotiators recognized that there were two forms of treaties relating to rights of inheritance, one which only granted the right to dispose of property, and the other which also granted the broader rights to acquire and possess property; the more restrictive type was flatly rejected in preparing the treaty project with Roumania. It is also evident from that correspondence that both countries placed particular emphasis upon the granting of "most favored nation" treatment. This is especially significant in that they recognized that other countries had been, and would be, granted rights consonant with those of native citizens.

With immediate regard to the Serbian Convention, the diplomatic correspondence shows not only a desire for a treaty containing the same terms as that between the United States and Roumania, but also that: (1) the negotiators were well aware of the impact of the particular words they chose, and had before them, but did not use, a form of treaty which expressly provided for a residence requirement for inheritance purposes, and (2) there were "few or no Americans" residing in Serbia when the Convention came into force, so that in the view taken by the court below the rights of inheritance granted by the treaty to Americans would have been practically without effect. These considerations reinforce the conclusion that residence was not deemed material to the possession of the inheritance rights in question.

C. The court below erred in relying on *Clark v. Allen*, 331 U.S. 503. The provisions of the treaty at issue in that case are distinguishable from those in question here. That treaty was meant to be given a restrictive interpretation—as evidenced by the diplomatic correspondence and the provisions themselves which (1) merely granted the right to "dispose" of property, and (2) failed to provide for "most favored nation" treatment.

II

The court below also erred in its alternative holding that existing Yugoslav monetary controls would prevent an American citizen from enjoying the benefit of such property as he might inherit from a Yugoslav, and hence, under Oregon law, a Yugoslav heir of an

American citizen could not inherit. Such foreign exchange laws as exist in Yugoslavia are expressly made subject to all treaties and international agreements in force between that country and any foreign country. Thus, they are subject to the Convention of 1881. Moreover, Yugoslavia is a signatory to the Bretton Woods Agreement which recognizes and obligates the parties to permit the interchange of funds, and to maintain in this respect only such controls as are permitted by its terms. It is clear, therefore, that any exchange controls as may exist in Yugoslavia are subject to the terms of the Bretton Woods Agreement and have been agreed upon and sanctioned by the United States Government. In these circumstances, the Oregon Probate Code cannot be applied to prevent petitioners from inheriting from the Yugoslav estates involved.

ARGUMENT

Under Oregon law, petitioners are concededly entitled to the decedents' estates here involved if, under Yugoslav law, an American citizen domiciled in the United States is entitled (1) to inherit from a Yugoslav domiciliary; and (2) to obtain the benefits of the property thus inherited. Oregon Revised Statutes, Section 111.070, *infra*, pp. 34-35.

Article II of the Convention Between the United States of America and Serbia, for Facilitating and Developing Commercial Relations, of 1881, *infra*, pp. 36-37, now in force between the United States and

Yugoslavia,² provides for the right of the citizens or subjects of the two countries to acquire and dispose of both real and personal property by testament or inheritance. The Supreme Court of Oregon, while recognizing that a treaty between the United States and a foreign country supersedes and overrides any inconsistent state law, held that Article II of the Convention of 1881 did not confer rights of inheritance where a citizen of one country (*e.g.*, the United States) dies leaving next-of-kin who are citizens of, and domiciled in, the other country (*e.g.*, Yugoslavia). As an alternative ground for directing an escheat of the estates to Oregon, the court below held that, notwithstanding the provisions of the Articles of Agreement of the International Monetary Fund (the Bretton Woods Agreement), *infra*, pp. 37-39, the monetary controls provided by Yugoslav law would preclude an American citizen from receiving the assets of the estate of a Yugoslav decedent, and therefore, pursuant to Subsection (c) of Section 111.070 of the Oregon Revised Statute, the claims of succession to the Oregon inheritances were defeated.

Both of these holdings are erroneous. The Convention of 1881 provides reciprocal rights of acquisition and disposal by inheritance in the circumstances

² The Republic of Yugoslavia is the successor government to the Kingdom of Serbia, and the Convention of 1881 is currently in force between the United States and Yugoslavia. Recognition of this fact was made in the Settlement of Pecuniary Claims Against Yugoslavia Agreement between the United States and Yugoslavia of July 19, 1948, 62 Stat. 2658, T.I.A.S. 1803, Article 5; see *In re Arbulich's Estate*, 41 Cal. 2d 86, 257 P. 2d 433, certiorari denied, 346 U.S. 897; *In re Stoich's Estate*, 349 P. 2d 255 (Ore.) (R. 82-105).

of this case, and has consistently been so interpreted by both governments. And the existing Yugoslav monetary controls relied on by the court below are subject to the provisions of both the Convention of 1881 and the Articles of Agreement of the International Monetary Fund (the Bretton Woods Agreement).

I

THE CONVENTION OF 1881 PROVIDES FOR RIGHTS OF INHERITANCE IN THE CIRCUMSTANCES OF THIS CASE

A. THE CONTRACTING PARTIES HAVE CONSISTENTLY CONSTRUED THE CONVENTION AS GRANTING UNRESTRICTED RECIPROCAL RIGHTS OF INHERITANCE

Article II of the Convention of 1881, *infra*, pp. 36-37, provides in relevant part that "[i]n all that concerns the right of acquiring, possessing or disposing of every kind of property, real or personal, citizens of the United States in Serbia and Serbian subjects in the United States, shall enjoy the rights which the respective laws grant * * * in each of these states to the subjects of the most favored nation." The Oregon Supreme Court construed the phrases "in Serbia" and "in the United States" as modifying "citizens of the United States" and "Serbian subjects" respectively. This reading led the court to its conclusion that the Convention confers no rights of inheritance upon an American citizen or Yugoslav subject who is domiciled and residing (as are petitioners here) in the country of his citizenship, not in the other country.

This construction is contrary to that given the Convention by the contracting parties. The State De-

partment and the Yugoslav Government have adopted the view that the phrases "in Serbia" and "in the United States" were not intended to place a residence requirement upon the rights of inheritance granted by the Convention. See Appendix B, *infra*, pp. 41-62, especially p. 59. Their view is that these phrases modify "shall enjoy." In other words, an American citizen—irrespective of domicile—shall enjoy in Serbia (now Yugoslavia) the same rights of inheritance as are conferred by the latter country upon the citizens of the "most favored nation" (and vice versa).

As will be developed later, treaties which the United States has entered into with France and Argentina³ plainly provide for reciprocal rights of inheritance in the circumstances of this case. See pp. 16-19, *infra*. Similarly, Yugoslavia has entered into treaties with Poland and Czechoslovakia which provide for such rights.⁴ In the light of these

³Treaty of Friendship, Commerce, and Navigation, Between the United States and the Argentine Confederation of 1853, 10 Stat. 1005, 1009, I Malloy 20; Consular Convention with France of 1853, 10 Stat. 992, I Malloy 528.

⁴Yugoslav-Polish Treaty, 30 League of Nations Treaty Series 455; Yugoslav-Czechoslovakia Treaty, 85 League of Nations Treaty Series 185. The Yugoslav-Polish Treaty of 1923 in pertinent part provides:

"The nationals of either Contracting Party shall be allowed, on the same conditions as nationals of the country to succeed or to take possession of property passing to them in the territory of the other Contracting Party by operation of law or in virtue of testamentary disposition."

treaties, it is the official position of both Yugoslavia and the United States that the citizens and subjects of the United States and Yugoslavia are entitled to acquire or succeed by testament or inheritance to property located in the other country, regardless of where the person asserting such right may reside. Note from the Yugoslav Embassy to the Department of State, November 4, 1957, *infra*, pp. 41-43; Note from the Department of State to the Yugoslav Embassy, December 26, 1957, *infra*, pp. 43-45; Note from the Ambassador of Yugoslavia to the Secretary of State, April 18, 1958, *infra*, pp. 45-54; Note from the Secretary of State to the Yugoslav Embassy, April 24, 1958, *infra*, pp. 55-60.

In his Note No. 4298, April 18, 1958, *supra*, the Yugoslav Ambassador to the United States said:

As regards the application of the most-favoured-nation clause to the rights of Yugoslav citizens, regardless of their permanent residence, to acquire property and to inherit estates in the United States, it is clearly explained for example, by Article IX of the Treaty of Friendship, Commerce and Navigation between the United States and Argentina * * *.

This treaty unequivocally grants Argentine citizens the same rights of inheritance as native citizens in the United States, in the same manner as the right is granted to the Yugoslav citizens by the treaty between Poland and Yugoslavia.

The Secretary of State replied in his note of April 24, 1958, *supra*:

The Department of State concurs in the Yugoslav interpretation of Article II of the 1881 Convention. That is to say, it is the opinion of the Department that Article II provides that whatever right is accorded this country to nationals of any third country, wherever resident, with respect to the acquisition, possession, or disposition of property (including the rights of inheritance and transfer of proceeds thereof), shall be accorded likewise in this country to Yugoslav nationals wherever resident and irrespective of the decedent's nationality. The Embassy's citation of the 1853 treaty between the United States of America and Argentina in connection with this matter appears to be appropriate. [*infra*, p. 57]

Furthermore, the official legal organs of the Yugoslav Government have rendered opinions that, according to the law and practice of the courts of Yugoslavia, American citizens "may inherit in the Federal People's Republic of Yugoslavia personal property under the same conditions and same judicial titles (law, will, etc.) as the citizens of the Federal People's Republic of Yugoslavia"; and, with respect to realty, American citizens are permitted under Yugoslav law to inherit "on the grounds of Art. 5 of the Decree on the control of real property of March 20,

1948 and by will on the grounds of diplomatic reciprocity in accordance with Art. 5 of the Agreement between the United States of America and the Federal People's Republic of Yugoslavia of July 19, 1948,⁶ both by national treatment and by the most favored nation clause." Official Certificate of the Minister of Justice of Yugoslavia as to Laws of Inheritance, Claimant's Exhibit 5 (R. 48-49); see also the Opinion of the Supreme Court of the Federal People's Republic of Yugoslavia, Su. No. 505/49, Belgrade, August 18, 1949, Claimant's Exhibit 6 (R. 49-51). Thus, it is clear that the legal and judicial departments of the Yugoslav government, as well as its State Secretariat for Foreign Affairs, recognize that the Convention of 1881 and the laws of Yugoslavia enacted in recognition thereof grant rights of inheritance to American citizens, regardless of their residence, which are equal to those of Yugoslav citizens or the citizens of the most favored nation.

⁶The agreement of July 19, 1948, is the Settlement of Pecuniary Claims Agreement of 1948, 62 Stat. 2658. Article 5 thereof provides:

"The Government of Yugoslavia agrees to accord to nationals of the United States lawfully continuing to hold, or hereafter acquiring assets in Yugoslavia, the right and privileges of using and administering such assets and the income therefrom within the framework of the controls and regulations of the Government of Yugoslavia, on conditions not less favorable than the rights and privileges accorded to nationals of Yugoslavia, or of any other country, in accordance with the Convention of Commerce and Navigation between the United States of America and the Prince of Serbia signed at Belgrade, October 2-14, 1881."

It is settled that "where a treaty fairly admits of two constructions, one restricting, [and] the other enlarging, rights which may be claimed under it, the more liberal interpretation is to be preferred." *Bacardi Corp. v. Domenech*, 311 U.S. 150, 163, citing *Jordan v. Tashiro*, 278 U.S. 123, 127; *Neilsen v. Johnson*, 279 U.S. 47, 52. Moreover, the construction placed upon a treaty by the "political department" of the government is entitled to great weight. *Neilsen v. Johnson*, *supra*; *Charlton v. Kelly*, 229 U.S. 447, 468; *Factor v. Laubenheimer*, 290 U.S. 276, 294, 295. Accordingly, in the absence of compelling evidence that the negotiators of the Convention of 1881 intended a different meaning, the court below was obliged to give effect to the liberal interpretation consistently given it by the American and Yugoslav governments.

B. THE NEGOTIATORS OF THE CONVENTION INTENDED IT TO HAVE A
BROAD APPLICATION

The background of the 1881 Convention strongly indicates that the construction of the contracting parties, rather than that of the Oregon court, is the one intended by the negotiators. The Convention was concluded as part of a series of treaties under which the United States sought to establish liberal reciprocal rights for the inheritance of properties by citizens of the United States and citizens or subjects of

foreign countries, regardless of where they might reside. To this end, Article I, *infra*, p. 36, provides that:

There shall be reciprocally full and entire liberty of commerce and navigation between the citizens and subjects of the two high contracting powers * * *.

That the purpose was to establish rights for the exchange of property, including rights of inheritance, upon the most extended principles of reciprocity is, we believe, shown by an examination of the "negotiations and diplomatic correspondence of the contracting parties relating to the subject matter"—which are, of course, relevant in determining the meaning of a treaty. *Factor v. Laubenheimer*, 290 U.S. 276, 294–295; *Neilsen v. Johnson*, 279 U.S. at 52; cf. *In re Ross*, 140 U.S. 453, 467.

1. *The Serbian Convention was concluded as one in a series of commercial treaties which were founded upon the most extended principles of reciprocity.* The Serbian Convention was preceded by, *inter alia*, the Consular Convention With France of 1853, 10 Stat. 992, 996, I Malloy 528, 531; and the Treaty of Friendship, Commerce and Navigation, Between the United States and the Argentine Confederation, 1853, 10 Stat. 1005, 1009, I Malloy 20, 23. These treaties, in common with the Serbian Convention, dealt specifically with the matter of reciprocal rights of inheritance. Article VII of the French treaty granted " * * * the same rights within its territory in respect to real and personal property, and to inheritance, as are enjoyed there by its own citizens."

Similarly, Article IX, of the Argentine treaty provides in pertinent part:

In whatever relates to * * * *acquiring and disposing* of property of every sort and denomination, either by sale, donation, exchange, testament, or in any other manner whatsoever, * * * the citizens of the two contracting parties shall reciprocally enjoy the *same privileges, liberties, and rights*, as native citizens * * *. [Emphasis added.]

The diplomatic correspondence in connection with the execution of these treaties reveals that the purpose of the negotiators was to establish liberal reciprocal rights for the exchange of properties between the citizens of the United States and of the foreign countries, regardless of their residence. The instructions issued by the Department of State to the respective plenipotentiaries for the United States reflect that what was desired were treaties regarding commerce and property rights which would assimilate the privileges of American citizens with those of native citizens of the respective foreign countries.*

* See Report on Negotiations dated November 30, 1850, printed as Senate Confidential Document No. 1, 31st Cong., 2d Sess., 5 Miller, *Treaties and Other International Acts of the United States of America* 861; D.S., 15 Instructions, Argentina, 19-26, 6 Miller; *supra*, 219. For example, John S. Pendleton, who negotiated the Argentine treaty on behalf of the United States, was directed by the Secretary of State as follows: "You are authorized to conclude a Treaty of Commerce and Navigation upon the *most extended principles of reciprocity*". (Emphasis added.) *Ibid.*

Further, with relation to the French treaty, the French plenipotentiary addressed himself expressly to the situation of the naturalized American citizen of French birth who dies domiciled in the United States leaving heirs resident in Europe. He noted that in the United States, to which French emigration was increasing, there was varying legislation among the states with respect to acquisition, possession, and disposition of property; that, if the French immigrant became a naturalized American citizen, he could not exempt his heirs from the force of laws excepting aliens from the acquisition of property; and that therefore "their successions become a source of difficulties." Note of the French Plenipotentiary of August 11, 1853, D.S., 16 Notes from the French Legation, 6 Miller, *supra*, 192. Thus, the plenipotentiary recognized that, if the treaty were to have the effect (with respect to inheritance rights) ascribed to the Serbian Convention by the court below, this result would obtain: a French citizen resident in the United States could make a testamentary disposition in favor of whomsoever he desired; but, if he became a naturalized citizen of the United States, he would be foreclosed from leaving his property to persons who were citizens and residents of France (nor could such persons claim any rights of succession should he die intestate). The contracting parties clearly sought to avoid this anomaly by granting in the French treaty the same rights to the citizens or subjects of the respective countries as

are enjoyed by the citizens and residents of those countries.⁷ In other words the intent was to grant the right to acquire as well as dispose of property in the other country, regardless of residence or citizenship.

2. *The diplomatic correspondence pertinent to the Serbian Convention demonstrates that no residence requirement was intended to be imposed upon rights of inheritance.* We believe that the negotiators of the Serbian Convention had the same intention with respect to the rights granted thereunder as was had by the negotiators of the French and Argentine treaties. No adequate basis can be found in the diplomatic correspondence for an inference that the negotiators desired to restrict the right of inheritance granted under the Convention to the citizens of one country who were resident in the other.

The Serbian Convention was negotiated contemporaneously with one with Roumania,⁸ and the negotiations on behalf of the United States were conducted by the same plenipotentiaries (John A. Kas-

⁷ It is noted that, in addition to the granting of the liberal inheritance rights mentioned, the parties also provided in Article 7 of the French treaty that the President of the United States take such steps as he deemed necessary in urging the States to conform their pertinent legislation to the national policy embodied in the treaty.

⁸ The commercial treaty with Roumania was never ratified by that country, although it was ratified with the advice and consent of the United States Senate. A printed copy can be found in *75 Regular Confidential Documents, United States Senate* (44th to 47th Congress, 1875 to 1883, 893-894 (1915)), which is in the library of the Department of State.

son and Eugene Schuyler).^{*} As a result, the relevant provisions of both of these treaties were nearly verbatim, and the instructions and correspondence relating to the Roumanian treaty are relevant on the question of the intention of the parties in the Serbian Convention.

The initial instruction sent to Kasson with respect to commencing negotiations of commercial treaties with Roumania and Serbia referred him, among other things, to "the Treaty of February 26, 1871, between the United States and Italy, concerning commerce and navigation". Instruction No. 121, to Kasson, July 30, 1879. The relevant provisions of that treaty provided that the respective citizens of the contracting parties "shall have power to dispose of their personal goods within the jurisdiction of the other, by sale, donation, testament or otherwise, and their representatives * * * shall succeed to their personal goods, whether by testament, or *ab intestato* and they may take possession thereof, either by themselves or others acting for them, and dispose of the same at their will, paying such dues

^{*} By Instruction No. 121 to Mr. Kasson, July 30, 1879, he was given the responsibility of commencing negotiations for commercial and consular conventions with both Roumania and Serbia. The responsibility for negotiating the treaty with Roumania was transferred to Eugene Schuyler on June 28, 1880 (Instruction No. 1, to Schuyler, June 28, 1880), and on April 12, 1881, he was instructed to assume the responsibility of negotiating a similar treaty with Serbia (Instruction No. 33, to Schuyler, April 12, 1881).

Since the various instructions and dispatches mentioned on this and the following pages are not available in printed form, we have lodged photostatic copies with the Clerk for the convenience of the Court.

only as the inhabitants of the country wherein such goods are [situate] * * *." ¹⁰ Although the pertinent provisions of this treaty contained no express requirement of residence, it was of the same nature as the German treaty which was before this Court in *Clark v. Allen*, 331 U.S. 503.¹¹ In that case, this Court held that the provisions of the German treaty pertaining to the disposition of personal property did not grant to a German national residing in Germany the right to inherit from an American citizen who dies resident in the United States. See pp. 27-30, *infra*.

Subsequent correspondence relating to the negotiation of the Roumanian treaty shows that neither the Department of State nor the Roumanian Legation was satisfied with the scope of the Italian treaty. With his Dispatch No. 314 (Austrian Diplomatic Series), April 20, 1880, from Vienna, Kasson transmitted to the Department a translated copy of Communication No. 168, April 16, 1880, from J. de Balatchano, Legation of Roumania in Vienna, which note set forth the provisions of a treaty concluded

¹⁰ The Italian treaty of 1871 provided separately for rights as to real property, and with relation thereto granted "most favored nation" treatment.

¹¹ It is to be noted that there are two basic lines of treaties dealing with rights of inheritance. The first includes those which merely grant the right to "dispose" of property. The second includes those which grant full rights to "acquire, possess and dispose" of property. There is some basis for raising by inference a requirement of residence in those treaties which merely grant rights of "disposal". See also *Frederickson v. Louisiana*, 23 How. 445, which involved a treaty granting only limited rights.

between Great Britain and Roumania on April 5, 1880 [71 Br. and Foreign States Papers 63 (1887)] as a counter-proposal to a project initially submitted by Kasson. Moreover, by State Department Instruction No. 170, to Kasson, May 4, 1880 (which was probably mailed prior to the receipt of Dispatch No. 314, *supra*), Kasson was directed by the Secretary of State, in pertinent part, as follows:

In view of the negotiations you are conducting with Roumania for the conclusion of proper treaty relations, it is desirable that you should at the earliest practicable moment familiarize yourself with the provisions of the Anglo-Roumanian Treaty, and that, in those negotiations, you should omit no precaution to secure for the benefit of American commerce all of the privileges which may be enjoyed by the *most favored nation*. [Emphasis added.]¹²

¹²The Anglo-Roumanian Treaty is that for the facilitation of commerce contracted between England and Roumania of April 5, 1880. The relevant portion of that treaty provided:

"British subjects in Roumania and Roumanian subjects in the territories (including the Colonies and foreign possessions) of Her Britannic Majesty shall enjoy full liberty to *acquire, possess, and dispose of* * * * every description of property which the laws of the country permit or may permit the subjects of any foreign nation to acquire or to hold.

"They shall be at liberty to acquire and dispose of such property whether by sale, donation, marriage, testament, or in any other-manner whatever, under the same conditions which are or may be established with respect to the subjects of any foreign nation, without being subject to any imposts, duties, or charges of any description whatever other or higher than those which are or may be levied on such foreign subjects, or on *subjects of the country*. They shall likewise be at liberty to export the proceeds of the sale of their property and goods in general, without being subjected, on such exportation,

Thus, it seems evident that the negotiators rejected the suggestion that they utilize the form of restricted language exemplified by the Italian treaty. The references to other treaties in the above instructions, as well as the contents of the instructions, indicate that the intentions of the parties were to provide for rights of inheritance and succession on extended principle of reciprocity—namely, to grant to the citizens or subjects of the other country the same rights as native citizens, without respect to residence.

In accordance with this instruction, the American negotiators inserted into the draft treaty a provision, modeled after the corresponding provisions of the Anglo-Roumanian treaty and a treaty between Belgium and Roumania,¹³ which contained the phrases "citizens of the United States in Roumania" and "Roumanian subjects in the United States" in precisely the same context as those terms appear in the

to pay as foreigners any other or higher duties than those payable under similar circumstances *by subjects of the country, or the subjects of any third power the most favored in these respects.*" (Emphasis added.) (Note No. 168, April 16, 1880, from J. de Balatchano, Legation of Roumania in Vienna, enclosed with Dispatch No. 314 (Austrian Diplomatic Series), April 20, 1880.)

¹³Schuyler, after succeeding Kasson as minister for the United States, disagreed with some of the wording of the Anglo-Roumanian treaty, and, therefore, with the consent of the Department of State used, in part, the Belgian-Roumanian treaty of 1881 as a model. This objection was that the Belgian-Roumanian Treaty conformed more closely to the usual form of commercial treaties. It was merely an objection to the wordage and not to the substance of the provisions. Dispatch No. 17 (Rumanian Diplomatic Series), November 20, 1880, from Schuyler (Bucharest).

Serbian treaty, as well as the "most favored nation" clause. In Dispatch No. 29 (Rumanian Diplomatic Series), January 4, 1881, Schuyler made reference to the amendment and stressed that the subjects of other foreign nations enjoyed no greater inheritance rights than the subjects of Roumania and could scarcely ask for larger rights in Roumania than those possessed by Roumanian citizens. Schuyler obviously thought that the added language had the effect of granting the *same* rights to American citizens as were possessed by Roumanians. Significantly, nowhere in any of the correspondence is there a suggestion that these rights would be conditioned upon the residence of the decedent.

Immediately subsequent to the signing of the Roumanian treaty, by Instruction No. 33, April 12, 1881, Schuyler was directed to undertake the negotiation of the Serbian Convention. With his Dispatch No. 65 (Rumanian Diplomatic Series), April 30, 1881, which acknowledged receipt of Instruction No. 33, Schuyler transmitted to the Department of State two copies of the treaty of friendship and commerce which was concluded between Great Britain and Serbia on February 7, 1880. The language used in Article I of that treaty demonstrates that no residence requirement was to be imposed with respect to the rights of citizens or subjects of the contracting parties *to acquire, hold or dispose of property* (although there was a residence requirement insofar as other matters were concerned, as shown by

the provision with respect to *commerce and trade* in the first paragraph of the following quotation):

British subjects who *reside temporarily or permanently in Serbia*, and *Servian subjects who reside temporarily or permanently in the territories * * * of Her Britannic Majesty*, shall enjoy therein, with respect to residence and the exercise of commerce and trade, the same rights as * * * natives, or the subjects of any other country the most favoured in this respect by either of the Contracting Parties.

British subjects in Serbia, and *Servian subjects in the territories * * * of Her Britannic Majesty*, shall enjoy the same treatment as natives, or as is now granted, or may hereafter be granted, to the subjects of any other country the most favoured in this respect, with regard to the acquisition, the holding, and the disposal of property, and all charges on it, with regard to access to Courts of Law and in the prosecution and defense of their rights * * *. [Emphasis added.] [Encl. 1, Dispatch No. 65 (Rumanian Diplomatic Series), April 30, 1881, from Schuyler; see also XV Hertslet, *Treaties and Conventions* (1885) 342-347.]

Of particular significance is the fact that Schuyler had before him and considered those provisions while negotiating and drafting the 1881 Serbian Convention, and yet no provision was included in the Convention which utilizes language comparable to the *first* paragraph of Article I of the Anglo-Serbian treaty quoted above (*i.e.*, establishing a residence requirement).

In this respect, several comments made by Schuyler in his Dispatch No. 66 (Rumanian Diplomatic Series), April 30, 1881, are pertinent. There, in reference to Instruction No. 33, *supra*, he said:

* * * I have the honour to say that in my opinion it is for the interest of American commerce to conclude conventions with Serbia by which Americans will be placed on the same footing as the subjects of other countries, both as regards commercial facilities and the protection which they can receive from the laws or from their consuls. When this has been done by means of a commercial treaty and a consular convention, the Government has done all that it can do for the promotion of trade * * *

* * * Even were that prospect [the prospect that Serbia might fall under the protection of or be annexed to the Austro-Hungarian Empire] nearer than it is, it would be best for the Government of the United States to see that its citizens enjoy the same rights and privileges in Serbia as do the subjects of other powers * * *

These statements make it clear that Schuyler's intention was to guarantee by treaty the most liberal rights that he could for American citizens.

It is also noteworthy that, in a later paragraph from the same dispatch and with reference to questions of consular jurisdiction, Schuyler said:

In consideration, however, * * * *that there are few or no Americans residing in Serbia, I think we could safely abandon all claims of consular jurisdiction.* [Emphasis added.]

Since there were "few or no Americans residing in Serbia" when the Convention was negotiated, it is very improbable that the signatories intended to impose a residence requirement upon the inheritance rights granted thereunder. Such a requirement would have rendered the inheritance provisions of the Convention practically nugatory, at least insofar as American citizens were concerned.

After making the observations quoted above, Schuyler concluded with his opinion that "the best form [for the commercial treaty] would be that that I have just concluded with Roumania".¹⁴ See *supra*, pp. 19-26. Thus, in the light of the historical background and the immediate negotiation of the Roumanian and Serbian Conventions, there is little question but that the construction consistently given the inheritance provisions of the Serbian Convention by the two governments is correct. Those rights are not restricted to nationals of the one country residing in the other but extend broadly to all nationals of both countries.

C. CLARK V. ALLEN IS DISTINGUISHABLE

The Supreme Court of Oregon, in holding that the Convention of 1881 conferred no rights of inheritance upon an American citizen or a Yugoslav subject who is domiciled and residing in the country of his citizenship, erroneously analogized the present case to *Clark*

¹⁴Schuyler consistently, thereafter, made reference to the Roumanian treaty. See Dispatch No. 77 (Rumanian Diplomatic Series), June 30, 1881; Dispatch No. 35 (Rumanian Consular Series), October 6, 1881.

v. *Allen*, 331 U.S. 503. There, this Court held that Article IV of the Treaty of Friendship, Commerce and Consular I between the United States and Germany of 1923, Ser. No. 725, 44 Stat. 2132, which granted to German nationals the power to dispose of their personal property within the territories of the United States, did not cover personalty which an American citizen here undertakes to leave to German nationals, but did cover personalty in this country which a German national undertakes to dispose of by will.¹⁵ The *Allen* case is distinguishable upon three grounds. *First*, as emphasized by this Court, when the syntax of the sentences dealing with realty and personalty is considered,¹⁶ “[s]o far as realty [was] concerned, the testator includ[ed] ‘any person’; and the property covered [was] that within the territory of

¹⁵ Article IV provided: “*Nationals of either High Contracting Party may have full power to dispose of their personal property of every kind within the territories of the other, by testament, donation, or otherwise, and their heirs, legatees and donees, -of whatsoever nationality, whether resident or non-resident, shall succeed to such personal property, and may take possession thereof, either by themselves or by others acting for them, and retain or dispose of the same at their pleasure subject to the payment of such duties or charges only as the nationals of the High Contracting Party within whose territories such property may be or belong shall be liable to pay in like cases*”. [Emphasis added.]

¹⁶ The German treaty dealt with real and personal property in separate provisions.

either of the high contracting parties. In case of personality, the provision govern[ed] the right of 'nationals' of either contracting party to dispose of their property within the territory of the 'other' contracting party; and it is 'such personal property' that the 'heirs, legatees and donees' are entitled to take." 331 U.S. at 515. Thus, the German treaty did not grant rights of inheritance with respect to personal property where the testator or intestate was a citizen of the country in which he was situated. On the other hand, the Serbian Convention grants to the "citizens of the United States in Serbia [i.e., with respect to Serbia] and Serbian subjects in the United States [i.e., with respect to the United States]" the right to acquire, possess and dispose of every kind of property. *Second*, the Serbian Convention grants rights both to acquire and dispose of every kind of property, while the German treaty merely granted rights of disposal. As we have indicated (*supra* p. 21), there are two distinct lines of treaties dealing with rights of inheritance. The first includes those treaties which merely grant the right to dispose of property, and the other includes those granting the broader rights of acquisition and possession as well as disposal. *Finally*, the rights granted by the Serbian

Convention are those "which the respective laws grant or shall grant in each of these states to the subjects of the most favored nation", whereas Article IV of the German treaty fails to provide for "most favored nation" treatment despite the fact that the parties chose to provide for such treatment with respect to other rights granted in later Articles of the treaty."

¹⁷ The court below likewise erred in relying upon *In re Arbulich's Estate*, 41 Cal. 2d 86, 257 P. 2d 433, certiorari denied, 346 U.S. 897. In *Arbulich*, the Supreme Court of California held, "upon the record", that the evidence was insufficient to show the existence of reciprocal rights of inheritance between the United States and Yugoslavia as of March 21, 1947, within the meaning of the California Probate Code. That court, as did the court below, discounted the provisions of the Serbian Convention on the ground that the rights granted thereunder are only granted to citizens of the United States residing in Yugoslavia or Yugoslav subjects residing in the United States. However, there was some justification for the California court's action, since the record before that court did not contain or refer to the Argentine or French treaties; neither did that court have before it the views of the Department of State and the Yugoslav government. On the other hand, the court below had all of this material before it. Thus, the *Arbulich* decision, being made expressly "upon the record", is distinguishable.

In addition, it should be noted that the Supreme Court of Montana has, on two occasions, arrived at the opposite conclusion to that of the court below and the California court in *Arbulich*. In *re Spoya's Estate*, 129 Mont. 83, 282 P. 2d 452; *In re Ginn's Estate*, 347 P. 2d 467. In each of those cases the claimants relied in part upon the Serbian Convention to prove the existence of reciprocal rights. However, the court did not explicitly place a construction on that convention, but found from the evidence adduced that reciprocity did exist.

II

THE EXISTENCE OF MONETARY CONTROLS IN YUGOSLAVIA DOES NOT PREVENT AN AMERICAN FROM INHERITING FROM A YUGOSLAV RESIDENT IN YUGOSLAVIA, AND FROM RECEIVING THE BENEFIT OF HIS INHERITANCE

Alternatively, the court below held that existing Yugoslav monetary controls would prevent an American citizen from obtaining the benefit of property which he inherited in Yugoslavia, and, therefore, pursuant to Section 111.070(1)(b) of the Oregon Revised Statutes, *infra*, pp. 34-35, a Yugoslav heir was not entitled to property he would otherwise inherit from an American decedent. This ruling is also erroneous.

Article 8 of the Yugoslav laws regulating payment transactions with foreign countries, *infra*, p. 35, makes all monetary controls subject to the treaties between Yugoslavia and the United States. Yugoslavia is a signatory to the Bretton Woods Agreement, *infra*, pp. 37-39, in which reciprocal rights for the interchange of funds are recognized. That Agreement obligates the countries participating to maintain only such controls as are permitted by its terms and within such limitations as are provided therein. By virtue of Section 4(b) of Article IV, *infra*, p. 38, the participating countries must "permit within [their] territories exchange transactions between its currency and the currencies of other members", within specified limits; and Section 3 of Article VI, *infra*, p. 38, provides that the "[m]embers may exercise such controls as are necessary to regulate international capital movements, but no member may exercise these controls in a manner which will restrict

payments for current transactions or which will unduly delay transfers of funds in settlement of commitments * * *," with certain irrelevant exceptions. Both the United States and Yugoslavia, by becoming signatories to the Bretton Woods Agreement have agreed and recognized that either or both could impose unlimited monetary controls to regulate capital movements, but could not altogether refuse to permit exchange transactions or restrict payments for current transactions. Thus, it is clear that Section 111.070(1)(b) of the Oregon Probate Code, at least in so far as it precludes inheritance by an alien whenever *any* monetary controls exist, has been overridden and superseded by the Bretton Woods Agreement and the overriding federal policy declared thereby.

Moreover, by reason of Article 5 of the Agreement Between the Government of the United States of America and the Government of the Federal People's Republic of Yugoslavia Regarding Pecuniary Claims of the United States and its Nationals of 1948 (the Agreement of 1948), *infra*, pp. 39-40, the Government of Yugoslavia is obligated to accord to American citizens the rights of using and administering such assets as they may hold or thereafter acquire within the framework of the "controls and regulations of the Government of Yugoslavia." The committee report on that Agreement recognizes that Article 5 "obliges Yugoslavia [pursuant to the Convention of 1881] to continue to grant most-favoured-nation treatment to Americans in ownership and acquisition of assets in Yugoslavia * * * [and that] Yugoslavia is required, by Article 10 [*infra*, p. 40], to authorize per-

sons in Yugoslavia to pay debts to United States nationals, firms, or agencies, and, so far as feasible, to permit dollar transfers for such purposes." S. Rep. No. 800, 81st Cong., 1st Sess., p. 4. Furthermore, the Yugoslav Government clearly recognizes the force and effect of this agreement, and that under it, as well as under the Yugoslav probate laws, American citizens may inherit property in Yugoslavia under the "same conditions * * * as the citizens of the Federal People's Republic of Yugoslavia." Official Certificate of the Minister of Justice of Yugoslavia as to Laws of Inheritance, Claimant's Exhibit 5 (R. 48-49). See also the Note from the Ambassador of Yugoslavia to the Secretary of State, April 18, 1958, *infra*, pp. 45-54. Thus, even if the Bretton Woods Agreement is assumed not to override and supersede Section 111.070(1)(b) of the Oregon Probate Code, the Agreement of 1948 clearly reflected the position of the two governments and in so doing reasserted the force and effect of the Convention of 1881.

CONCLUSION

For the reasons stated, it is respectfully submitted that the judgments of the Supreme Court of the State of Oregon should be reversed.

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JANUARY 1961.

APPENDICES

APPENDIX A

STATUTES AND TREATIES INVOLVED

1. Section 111.070 of the Oregon Revised Statutes provides as follows:

(1) The right of an alien not residing within the United States or its territories to take either real or personal property or the proceeds thereof in this state by succession or testamentary disposition, upon the same terms and conditions as inhabitants and citizens of the United States, is dependent in each case:

(a) Upon the existence of a reciprocal right upon the part of citizens of the United States to take real and personal property and the proceeds thereof upon the same terms and conditions as inhabitants and citizens of the country of which such alien is an inhabitant or citizen;

(b) Upon the rights of citizens of the United States to receive by payment to them within the United States or its territories money originating from the estates of persons dying within such foreign country; and

(c) Upon proof that such foreign heirs, distributees, devisees or legatees may receive the benefit, use or control of money or property from estates of persons dying in this state without confiscation, in whole or in part, by the governments of such foreign countries.

(2) The burden is upon such nonresident alien to establish the fact of existence of the reciprocal rights set forth in subsection (1) of this section.

(3) If such reciprocal rights are not found to exist and if no heir, devisee or legatee other than such alien is found eligible to take such property, the property shall be disposed of as escheated property.

2. Article 8 of the Yugoslav laws regulating payment transactions with foreign countries provides as follows (Law To Regulate Payments to and From Foreign Countries (Foreign Exchange Law) (Official Gazette of the Federal People's Republic of Yugoslavia, Friday, October 25, 1946, Belgrade, No. 86, Year II)):

Foreign exchange regulations are understood to include provisions of this Law; provisions of regulations for the implementation of this Law; orders, instructions and rulings of the Minister of Finance of the FPRY issued pursuant to this Law; all regulations for the control of imports and exports issued by the Minister of Foreign Trade of the FPRY; and all such provisions of agreements with foreign countries as relate to payments.

3. The relevant provisions of the Treaty Between the United States of America and Serbia, For Facilitating and Developing Commercial Relations of 1881, 22 Stat. 963, II Malloy, Treaties 1613, are as follows:

A PROCLAMATION

Whereas, a Treaty between the United States of America and His Highness the Prince of Serbia, for facilitating and developing the commercial relations established between the two countries, was concluded and signed at Belgrade by their respective plenipotentiaries on the 2/14 day of October, 1881, the original of which treaty, being in the English and Serbian languages, is word for word as follows:
Treaty of Commerce Between the United States of America and Serbia.

The United States of America and His Highness the Prince of Serbia, animated by the desire of facilitating and developing the commercial relations established between the two countries, have determined with this object to conclude a treaty, and have named * * * their respective plenipotentiaries * * *

Who * * * have agreed upon and concluded the following articles:

Article I.

There shall be reciprocally full and entire liberty of commerce and navigation between the citizens and subjects of the two high contracting powers, who shall be at liberty to establish themselves freely in each other's territory.

Article II.

In all that concerns the right of acquiring, possessing or disposing of every kind of property, real or personal, citizens of the United States in Serbia and Serbian subjects in the United States, shall enjoy the rights which the respective laws grant or shall grant in each of these states to the subjects of the most favored nation.

Within these limits, and under the same conditions as the subjects of the most favored nation, they shall be at liberty to acquire and dispose of such property, whether by purchase, sale, donation, exchange, marriage contract, testament, inheritance, or in any other manner whatsoever, without being subject to any taxes, imposts or charges whatever, other or higher than those which are or shall be levied on natives or on the subjects of the most favored state.

They shall likewise be at liberty to export freely the proceeds of the sale of their property, and their goods in general, without being subjected to pay any other or higher duties than those payable under similar circumstances by natives or by the subjects of the most favored state.

4. The relevant provisions of the International Monetary Fund Agreement, 60 Stat. 1401, 1403, T.I.A.S. 1501, are as follows:

Article IV.

PAR VALUE OF CURRENCIES

Section 1. *Expression of par values.*

Section 2. *Gold purchases based on par values*

Section 3. *Foreign exchange dealings based on parity*

The maximum and the minimum rates for exchange transactions between the currencies of members taking place within their territories shall not differ from parity.

- (i) in the case of spot exchange transactions, by more than one percent; and
- (ii) in the case of other exchange transactions, by a margin which exceeds the margin for spot exchange transactions by more than the Fund considers reasonable.

Section 4. *Obligations regarding exchange stability*

(a) Each member undertakes to collaborate with the Fund to promote exchange stability, to maintain orderly exchange arrangements with other members, and to avoid competitive exchange alterations.

(b) Each member undertakes, through appropriate measures consistent with this Agreement, to permit within its territories exchange transactions between its currency and the currencies of other members only within the limits prescribed under Section 3 of this Article. * * *

Article VI.

CAPITAL TRANSFERS

Section 1. *Use of the Fund's resources for capital transfers*

(a) A member may not make net use of the Fund's resources to meet a large or sustained outflow of capital, and the Fund may request a member to exercise controls to prevent such use of the resources of the Fund. If, after receiving such a request, a member fails to exercise appropriate controls, the Fund may declare the member ineligible to use the resources of the Fund.

Section 2. *Special provisions for capital transfers*

Section 3. *Controls of capital transfers*

Members may exercise such controls as are necessary to regulate international capital movements, but no member may exercise these controls in a manner which will restrict payments for current transactions or which will unduly delay transfers of funds in settlement of commitments, except as provided in Article VII, Section 3(b), and in Article XIV, Section 2.

Article VIII.

GENERAL OBLIGATIONS OF MEMBERS

Section 1. *Introduction*

In addition to the obligations assumed under other articles of this Agreement, each member undertakes the obligations set out in this Article.

Section 2. *Avoidance of restrictions on current payments*

(a) Subject to the provisions of Article VII, Section 3(b), and Article XIV, Section 2, no member shall, without the approval of the Fund, impose restrictions on the making of payments and transfers for current international transactions.

(b) Exchange contracts which involve the currency of any member and which are contrary to the exchange control regulations of that member maintained or imposed consistently with this Agreement shall be unenforceable in the territories of any member. In addition, members may, by mutual accord, cooperate in measures for the purpose of making the exchange control regulations of either member more effective, provided that such measures and regulations are consistent with this Agreement.

5. The Agreement Between the Governments of the United States of America and the Federal People's Republic of Yugoslavia Regarding Pecuniary Claims of the United States and its Nationals, July 19, 1948, 62 Stat. 2658, T.I.A.S. 1803, provides, in pertinent part:

ARTICLE 5

The Government of Yugoslavia agrees to accord to nationals of the United States lawfully continuing to hold, or hereafter acquiring assets in Yugoslavia, the rights and privileges of using and administering such assets and the income therefrom within the framework of the

controls and regulations of the Government of Yugoslavia, on conditions not less favorable than the rights and privileges accorded to nationals of Yugoslavia, or of any other country, in accordance with the Convention of Commerce and Navigation between the United States of America and the Prince of Serbia, signed at Belgrade, October 2-14, 1881.

* * * *

ARTICLE 10

(a) The Government of Yugoslavia shall authorize persons residing in Yugoslavia who are legally indebted to any individual, firm, or governmental agency in the United States, to meet such indebtedness on maturity.

(b) To the extent feasible, considering Yugoslav foreign exchange resources and regulations, and when necessary to effectuate the purposes of paragraph (a) of this Article, the Government of Yugoslavia shall permit the use of dollars by, or provide dollars to those Yugoslav residents legally owing dollar obligations arising from commercial transactions involving goods or services.

* * * *

APPENDIX B

DIPLOMATIC CORRESPONDENCE

From the Yugoslav Embassy to the Department of State, November 4, 1957:

No. 4693

The Embassy of Yugoslavia presents its compliments to the Department of State and has the honor to inform the Department that citizens of Yugoslavia, heirs, next-of-kin, devisees and legatees of deceased residents of the United States, continue in some States to meet with difficulties in being recognized as such. This appears to be due to the requirement of such States of proof of reciprocity in such matters. Although under the law of Yugoslavia, competent and conclusive evidence of which has been furnished to the appropriate executive and judicial authorities in such States, citizens of the United States have full rights of inheritance to property in Yugoslavia, both real and personal, by intestacy or as beneficiaries under a will, some doubt has been indicated by certain of such authorities as to whether in practice such rights have been recognized. In such circumstances, proof of numerous instances of the inheritance by American citizens of property in Yugoslavia and of the formal recognition thereof by the competent Yugoslav authorities, has been tendered to such authorities, but has been rejected as inconclusive. The Government of Yugoslavia is unaware of any instance in which an American citizen entitled to the inherit-

ance of property in Yugoslavia as heir, next-of-kin, devisee or legatee of a decedent has been denied the right to such inheritance. Accordingly, it will be appreciated if the Department of State would advise the Embassy whether or not any such instance, or alleged instance, has been brought to the Department's attention.

The Government of Yugoslavia has always recognized the right of an American citizen to have his funds derived from inheritance in Yugoslavia transferred to him in the United States in Dollars, the legal basis for this right having been stated in the Embassy's note No. 4135 dated March 27, 1957. The Government of Yugoslavia is also unaware of any instance in which an American citizen, an heir or and [sic] beneficiary of a decedent [sic] estate in Yugoslavia, has, upon application therefor, been denied the right to the transfer of his inheritance or the proceeds of the sale thereof, to the United States in Dollars. Since, however, some doubt has been expressed by certain authorities in some States as to whether the regulations, policy and procedures described in the Embassy's note under reference have been followed in practice, it would be appreciated if the Department would advise the Embassy whether or not there has been brought to the attention of the Department any instance or alleged instance in which an American beneficiary of a decedent [sic] estate in Yugoslavia has, upon application therefor, been denied the right to the transfer of his inheritance, or proceeds of the sale thereof, to the United States in Dollars.

If any report of any instance or alleged instance in either of the categories described above has come to the Department's attention, in order that the competent authorities in Yugoslavia may investigate the

same and ascertain the facts, it is requested that the Embassy be informed to the fullest extent possible as to each such instance of all relevant particulars, including (1) the name and address of the American citizen involved, (2) the name and address, and the date and place of death of the Yugoslav decedent [sic] whose estate was involved, (3) the Yugoslav court in which such estate was probated, and (4) in the case of instances in the latter category, the Yugoslav agency to which application for transfer is said to have been made, and when.

The Embassy avails itself of this opportunity to renew to the Department of State the assurance of its highest consideration.

Washington, D.C., November 4th, 1957.

Department of State, Washington, D.C.

From the Department of State to the Yugoslav Embassy, December 26, 1957:

The Department of State acknowledges receipt of Note No. 4693, dated November 4, 1957, from the Embassy of Yugoslavia; regarding difficulties currently being encountered in some States in the United States by citizens of Yugoslavia, heirs, next-of-kin, devisees and legatees of deceased resident of the United States, in being recognized as such in some States in the United States which require proof of reciprocity.

The Embassy states that citizens of the United States have full rights of inheritance to property in Yugoslavia, both real and personal, and that the Government of Yugoslavia is unaware of any instance in which an American citizen entitled to inherit property in Yugoslavia has been denied the right to such inheritance or has, upon application therefor, been denied the right to the transfer of his

inheritance, or the proceeds of the sale thereof, to the United States in dollars. However, certain State authorities have indicated some doubt as to whether in practice such rights of inheritance have been recognized, and have rejected as inconclusive the tendered proof of numerous instances of the inheritance by American citizens of property in Yugoslavia.

The Embassy therefore asks to be advised if there has been brought to the attention of the Department of State any instance or alleged instance in which an American citizen entitled to the inheritance of property in Yugoslavia as heir, next-of-kin, devisee or legatee of a decedent has been denied the right to such inheritance or has, upon application therefor, been denied the right to the transfer of his inheritance, or the proceeds of the sale thereof, to the United States in dollars.

The Department assumes that the Embassy's inquiry relates only to cases in which the claimant was an American citizen on the date of the death of the decedent.

The Department of State does not have complete and up-to-date information regarding all claims of American citizens to share in estates in Yugoslavia or the action taken by the appropriate Yugoslav authorities on every application by an American citizen to transfer the proceeds of his shares of an estate in dollars to the United States. Such matters are ordinarily handled in Yugoslavia, as in other countries, by the heir or devisee personally or by a legal representative acting on his behalf.

Numerous inquiries are, of course, addressed to the Department or to American diplomatic and consular officers stationed in the country in which the estate is being administered or in which the property is located requesting advice and assistance. The Depart-

ment is normally informed of later developments in the case only when the American citizen concerned believes he is in danger of being denied the share of an estate alleged to be rightfully his, or when he believes he is encountering unwarranted difficulties or undue delay in effecting the transfer to the United States of the proceeds of his share of an estate.

In the light of the foregoing, the Embassy is informed that the Department has not been apprised of any instance where an American citizen has not been permitted to inherit or succeed by will or otherwise to property from an estate in Yugoslavia, or, after having duly made application therefor, has not been granted permission to transfer his inheritance or the proceeds of the sale thereof to the United States in dollars.

Department of State, Washington.

December 26, 1957.

S/S CR.

From the Ambassador of Yugoslavia to the Secretary of State, April 18, 1958:

No. 4298

The Ambassador of the Federal People's Republic of Yugoslavia presents his compliments to the Honorable the Secretary of State and, in accordance with talks held between representatives of the Yugoslav Embassy and representatives of the Department of State, has the honor to inform the Honorable the Secretary of State that in the United States there have in the post-war period been various interpretations of Article II of the "Convention for Facilitating and Developing Commercial Relations" concluded between Serbia and the United States on October 2/14, 1881,

(also commonly called the Convention of Commerce and Navigation of 1881, Treaty Series 319, 22 Stat. 936, 2 Malloy's Treaties, ect. [sic] 1613. The governments of the Federal People's Republic of Yugoslavia and of the United States of America recognize that this Convention has at all times been and is now in force between Yugoslavia and the United States. Article II of the Convention reads in the English text as follows:

"In all that concerns the right of acquiring, or possessing or disposing of every kind of property, real or personal, citizens of the United States in Serbia and Serbian Subjects in the United States, shall enjoy the rights which the respective laws grant or shall grant in each of these states to the subjects of the most favoured nation."

"Within these limits, and under the same conditions as the subjects of the most favoured nation, they shall be at liberty to acquire and dispose of such property, whether by purchase, sale, donation, exchange, marriage contract, testament, inheritance, or in any other manner whatever, without being subject to any taxes, imposts or charges whatever, other or higher than those which are or shall be levied on natives or on the subjects of the most favoured nation."

"They shall likewise be at liberty to export freely the proceeds of the sale of their property and their goods in general, without being subjected to pay any other or higher duties than those payable under similar circumstances by natives or by the subjects of the most favoured state."

In the period since 1945 there have been cases in which Article II of the Convention of Commerce and Navigation of 1881, when applied in the United States, was interpreted as if it did not sufficiently bear

out reciprocal rights of inheritance between the citizens of the Federal People's Republic of Yugoslavia and the citizens of the United States of America. According to the interpretations (particularly a statement by the Supreme Court of California in the case *In re Arbulich Estate*; 41 Cal. 2d 86, 257 P. 2d 433 and statements of some State attorneys general), the provisions of the Convention allegedly cannot be applied to those decedents' estates, the decedent of which is an American citizen who has left property in the United States to a Yugoslav citizen residing in Yugoslavia. According to such an interpretation, the acquisition of property by inheritance, pursuant to the provision of the most-favoured-nation clause in Article II of the Convention, encompasses only those citizens of Yugoslavia actually and physically living, sojourning or residing within the borders of the United States regardless of the decedent's citizenship. On the other hand, according to such an interpretation, the Yugoslav citizens permanently residing within the borders of Yugoslavia cannot inherit property left them by a resident of the United States, although the heirs are in most cases the closest relatives of the decedent's—his parents, spouse, children, brothers, sisters, etc. And vice versa, the corresponding should, then, apply as regards the inheritance rights of American citizens in Yugoslavia.

Such an interpretation, however, is directly contrary to the past and present interpretation of the Yugoslav courts and authorities, who always have been applying the provisions of Article II of the Convention so that by virtue thereof the American citizens are entitled to acquire property by inheritance, testamentary disposition or intestate succession, or by transfer, regardless of whether they are permanently residing in the United States of America, or anywhere else, as well as

regardless of whether the decedent is a citizen of Yugoslavia, the United States or any third country. This can be clearly deduced from many a decision of the Yugoslav courts, who have been applying and interpreting Article II of the Convention exclusively in the above sense.

In Article 23 of the Convention of Legal Relations between Yugoslavia and Poland, concluded on May 4, 1923, (85 League of Nations Treaty Series 455) the two contracting parties extended rights of inheritance to the nationals of the other as follows:

“The nationals of either Contracting Party shall be allowed, on the same conditions as nationals of the country to succeed or to take possession of property passing to them in the territory of the other Contracting Party by operation of law or in virtue of testamentary disposition.”

It is the construction of the Yugoslav Government that under the most-favoured-nation clause of Article II of the Convention of 1881 citizens of the United States regardless of their whereabouts or residence have had extended to them and are entitled to enjoy the same rights of inheritance from decedents' estates and of property located in Yugoslavia as nationals of Yugoslavia themselves, and regardless of whether the decedent was a citizen of Yugoslavia, the United States of America or any third country.

As regards the application of the most-favoured-nation clause to the rights of the Yugoslav citizens, regardless of their permanent residence, to acquire property and to inherit estates in the United States, it is clearly explained for example, by Article IX of the Treaty of Friendship, Commerce and Navigation between the United States and Argentina, signed at San Jose on July 27, 1853 (10 Stat./Pt. 2, Public Treaties/16 Treaty Series 4, I Treaties/Malloy/20);

"In whatever relates to the police of the ports, the lading and unlading of ships, the safety of the merchandise, goods and effects, and to the acquiring and disposing of property of every sort and denomination, either by sale, donation, exchange, testament or in any other manner whatsoever, as also to the administration of justice, the citizens of the two contracting parties shall reciprocally enjoy the same privileges, liberties and rights, as native citizens: and they shall not be charged, in any of those respects with any higher imposts or duties than those which are paid or may be paid, by native citizens, submitting, of course, to the local laws, and regulations of each country respectively. If any citizen of either of the two contracting parties shall die without will or testament, in any of the territories of the other, the Consul-General or Consul of the nation to which the deceased belonged, or the representative of such Consul-General or Consul, in the absence, shall have the right to intervene in the possession, administration and judicial liquidation of the estate of the deceased, conformably with the laws of the country, for the benefit of the creditors and legal heirs."

This treaty unequivocally grants Argentine citizens the same rights of inheritance as native citizens in the United States, in the same manner as the right is granted to the Yugoslav citizens by the treaty between Poland and Yugoslavia. It will be observed that in substance the 1853 treaty with Argentina is very similar to the 1923 treaty between Poland and Yugoslavia.

It is further the construction of the Yugoslav Government that by virtue of the most-favored-nation clause and the third [sic] subparagraph of Article II of the Convention of 1881, American citizens, wherever they may physically be or permanently reside,

have and must be accorded the right to withdraw and export, i.e. have transferred to them upon request to the United States or wherever they may direct, moneys due them by inheritance from decedents' estates located in Yugoslavia or moneys derived from the sale of inherited property in Yugoslavia.

The interpretation of the Yugoslav Government is also based on the spirit and intentions stated in the preamble to the Convention of Commerce and Navigation of 1881, as well as on the basis of the needs resulting from the relations which prevailed at that time between the two countries.

It is apparent, therefore, that the construction of the treaty adopted by the Supreme Court of California in *In Re Arbulich Estate* is not in accord with the understanding of the Yugoslav Government concerning the meaning and the effect of Article II of the Convention of 1881. This construction requires that there be twice read into the language the word "residing" or at least the word "sojourning" so the clause could read "citizens of the United States residing (or sojourning) in Serbia and Serbian citizens residing (or sojourning) in the United States". It requires no addition of words in the treaty to rephrase from Victorian into modern English what was beyond doubt the intention of the treaty-makers as to the persons to be covered by the treaty.

Article 5 of the "Agreement Between the Government of the United States of America and the Federal People's Republic of Yugoslavia Regarding Pecuniary Claims of the United States and its Citizens", concluded on July 19, 1948, (Treaty Series No. 1803, 72 Stat. 2133) provides as follows:

"The Government of Yugoslavia agrees to accord to nationals of the United States lawfully continuing to hold, or hereafter acquiring assets

in Yugoslavia, the rights and privileges of using and administering such assets and the income therefrom within the framework of the controls and regulations of the Government of Yugoslavia, on conditions not less favourable than the rights and privileges accorded to nationals of Yugoslavia or of any other country, in accordance with the Convention of Commerce and Navigation between the United States of America and the Prince of Serbia, signed at Belgrade, October 2/14, 1881."

It is evident that both Parties have confirmed thereby that Article II of the Convention of 1881 is to be interpreted to the effect that the citizens of one contracting party shall have the most-favoured-nation treatment when acquiring property in the territory of the other, regardless of the heir's residence or the decedent's citizenship. This joint interpretation (reached by both contracting parties) confirms the already reached concurrence on the existence of the rights of American citizens in Yugoslavia (and accordingly of the Yugoslav citizens in the United States of America) to acquire property (and accordingly to inherit) by virtue of Article II of the Convention of 1881, regardless of the heir's residence and the decedent's citizenship.

The Commission for Interpreting of Laws of the National Assembly of the Federal People's Republic of Yugoslavia issued on August 3, 1953, and the National Assembly subsequently confirmed, a binding interpretation, as follows:

"According to Article 5 of the Agreement between the Government of the United States of America and the Federal Peoples Republic of Yugoslavia regarding Pecuniary Claims of the United States of America and its Citizens concluded on July 19, 1948; and the provisions of Article II of the Convention of Commerce and

Navigation between Serbia and the United States of America, concluded in October 2/14, 1881, which is still in force, citizens of the United States of America are equal with citizens of the Federal People's Republic of Yugoslavia in regard to the manner and object of acquiring and disposing of both personal and real property. Accordingly, they have the right to inherit real property in the territory of the Federal People's Republic of Yugoslavia under the same conditions as citizens of the Federal People's Republic of Yugoslavia on the basis of the law, as well as on the basis of a Testament, regardless of the provision of Article 5, paragraph 1 of the Decree regarding the Control of Transfers of Real Property, of March 20 1948."

In the note of the Secretariat of State for Foreign Affairs of Yugoslavia No. 515370/53 of October 21, 1953, to the American Embassy in Belgrade, in response to the American Embassy's note No. 1368 of May 21, 1953, unqualified assurances were given by the Yugoslav Government that it considers citizens of the United States, regardless of their whereabouts or residence, to have full reciprocal rights of inheritance in decedent's estates located in Yugoslavia on the basis of Article II of the Convention between Serbia and the United States of 1881, as confirmed by Article 5 of the Agreement on Pecuniary Claims of the United States and its Citizens, concluded on July 19, 1948.

The Attorneys General of both Oregon and California, which enacted the so-called reciprocal inheritance rights statutes in the years 1937 and 1941 respectively, issued opinions that reciprocal inheritance rights existed between Yugoslavia and the United States in the same manner required by their statutes by virtue of Article II of the Convention between

Serbia and the United States of 1881. The opinion of the Honorable I. H. Van Winkle, Attorney General of Oregon is in the 1938-1940 volume of the Opinions of the Attorneys General at page 136, that of the Honorable Earl Warren, Attorney General of California, is No. 1 NS 4451 dated July 15, 1942, from which the following is quoted:

"Class 2. Where the same or reciprocal rights in the matter of acquiring and holding all kinds of property in any manner whatsoever are not granted to the citizens of the respective parties to the treaty in those specific words, but are in effect so granted by conferring such rights upon those citizens which the respective laws grant or shall grant in each of the states to the subjects of the most-favoured-nation, and under the same conditions as subjects of the most-favoured-nation."

"In the class is Yugoslavia (the Treaty applying also to Serbia and the Kingdom of the Serbs, Croats and Slovenes) the citizens of which are entitled, by virtue of the reference provisions of such Treaty, to the same rights as those enjoyed by the citizens of Argentina."

In substantiation of the fact that Yugoslavia has always meticulously performed and carried out the obligations which, under its construction of the Convention, are due American citizens heirs or beneficiaries of estates and property in Yugoslavia, reference may be made to the Department's note of December 26, 1957, in response to this Embassy's note of November 4, 1957, No. 4693, wherein the Department stated:

"In the light of the foregoing, the Embassy is informed that the Department has not been apprised of any instance where an American citizen has not been permitted to inherit or succeed by will or otherwise to property from an estate in Yugoslavia, or, after having duly made

application therefor, has not been granted permission to transfer his inheritance of the proceeds of sale thereof to the United States in dollars."

In view of the foregoing, the Government of the Federal People's Republic of Yugoslavia would appreciate being advised of the opinion of the Government of the United States on the following:

Whether it concurs with the construction of the Yugoslav Government that it was the treaty-making intention of both contracting parties in negotiating and concluding Article II of the Convention for Facilitating and Developing Commercial Relations of 1881 and Article 5 of the Agreement between the Government of the United States of America and the Federal People's Republic of Yugoslavia regarding Pecuniary Claims of the United States and its Citizens of 1948 to safeguard the inheritance rights of American Citizens and to ensure the transfer of the proceeds accruing thereof regardless of their permanent residence, encompassing therefore also those American citizens residing in the United States, and reversely, whether it concurs with the construction of the Yugoslav Government that it was the treaty-making intention of both contracting parties in negotiating and concluding Article II of the Convention of 1881 and Article 5 of the Agreement of 1948, to safeguard the inheritance rights of Yugoslav citizens and to ensure the transfer of the proceeds accruing thereof, regardless of their permanent residence, encompassing therefore also those residing in Yugoslavia?

The Yugoslav Ambassador avails himself of this opportunity to renew to the Honorable the Secretary of State the assurances of his highest consideration.
Washington, D.C., April 18, 1958.

From the Secretary of State to the Yugoslav Embassy,
April 24, 1958:

The Secretary of State presents his compliments to the Charge d'Affaires ad interim of the Federal People's Republic of Yugoslavia and acknowledges the receipt of the Embassy's note No. 4298 of April 18, 1958, regarding the interpretation of Article II of the Convention for Facilitating and Developing Commercial Relations (sometimes called the Convention of Commerce and Navigation), concluded on October 2/14, 1881 between the United States of America and Serbia and presently in force between the United States of America and Yugoslavia. (22 Statutes at Large 963, Treaty Series 319.)

According to the Embassy's note, the Government of Yugoslavia considers that, by virtue of Article II of the 1881 Convention, citizens of the United States are entitled to most-favored-nation treatment with respect to the acquisition, possession, or disposition of property in Yugoslavia whether they reside in Yugoslavia or elsewhere and, in the case of inheritance, regardless of the decedent's nationality. With particular reference to inheritance, the Embassy states that, in accordance with this construction of Article II of the 1881 Convention, United States citizens, regardless of their residence or of the decedent's nationality, are entitled to and do actually enjoy the same rights as Yugoslav nationals with respect to the inheritance of property in Yugoslavia. This, as the note points out, is in consequence of the fact that United States citizens, wherever resident, are accorded in Yugoslavia treatment no less favorable than that accorded in Yugoslavia to nationals of Poland under Article 23 of the Treaty Regarding Legal Relations concluded on May 4, 1923 between Yugoslavia and Poland, whereby

Polish nationals, irrespective of their residence, are accorded national treatment (that is, the same treatment as Yugoslav nationals) in regard to the succession to and possession of property in Yugoslavia.

The Embassy's note cites Article IX of the Treaty of Friendship, Commerce and Navigation of July 27, 1853 between the United States of America and Argentina, which contains a national-treatment provision similar in substance to the provision in Article 23 of the 1923 treaty between Yugoslavia and Poland. The note indicates that, by the application of such provision together with the most-favored-nation provision in Article II of the 1881 Convention, Yugoslav nationals are entitled to and should be accorded, whether they reside in the United States or elsewhere and regardless of the decedent's nationality, the right to acquire, possess, or dispose of property in the United States.

The Embassy's note further states that the Yugoslav Government, pursuant to the third paragraph of Article II of the 1881 Convention, accords to American citizens, wherever they reside, the right to withdraw and have transferred to them moneys due them by inheritance from decedents' estates located in Yugoslavia or moneys derived from the sale of inherited property in Yugoslavia.

The Embassy's note called attention to the agreement of July 19, 1948 between the United States of America and Yugoslavia regarding the settlement of pecuniary claims against Yugoslavia, and particularly to Article 5 of that agreement which has the effect of confirming that Article II of the 1881 Convention is interpreted as according rights in regard to property in one or the other of the two countries irrespective of the place of residence of the nationals concerned or of the decedent's nationality.

The Embassy's note inquired whether the United States Government concurs with the Yugoslav Government's interpretation of Article II of the 1881 Convention, particularly as applied to the rights of Yugoslav nationals who do not reside in the United States. It appears that the Embassy's inquiry is prompted by indications that some State attorneys general in the United States are tending toward the adoption of a contrary view. The note refers to a statement by the Supreme Court of California in the case of *In re Arbulich's Estate*, 41 Cal. 2d 86, 257 P. 2d 433, certiorari denied, 346 U.S. 897 (1953).

It is well to bear in mind a general principle applied in the United States, namely, that although an expression of opinion by the Department of State with respect to the interpretation of a treaty provision will normally be given considerable weight by the courts, such an expression of opinion is not binding on the courts.

The Department of State concurs in the Yugoslav interpretation of Article II of the 1881 Convention. That is to say, it is the opinion of the Department that Article II provides that whatever right is accorded in this country to nationals of any third country, wherever resident, with respect to the acquisition, possession, or disposition of property (including the rights of inheritance and transfer of proceeds thereof), shall be accorded likewise in this country to Yugoslav nationals wherever resident and irrespective of the decedent's nationality. The Embassy's citation of the 1853 treaty between the United States of America and Argentina in connection with this matter appears to be appropriate.

Article II of the 1881 Convention is quoted in the Embassy's note, so it will not be set forth here. The critical words "citizens of the United States in Serbia

and Serbian subjects in the United States shall enjoy [certain rights]" as they appear in the first paragraph of Article II may be given at least two plausible interpretations, namely: (1) The words "in Serbia" and "in the United States" may be deemed adjectival, modifying respectively "citizens of the United States" and "Serbian subjects". (2) The words "in Serbia" and "in the United States" may be deemed adverbial, modifying "shall enjoy". The first of these interpretations would limit the application of the article to the rights of nationals of the one country present in the other. However, a literal reading of the pertinent phraseology in context does not require such a restrictive interpretation. Rather, a liberal interpretation of the ambiguous portion produces a reasonable construction consonant with the spirit of the Treaty as a whole.

Under the first, or restrictive interpretation, an American citizen residing in Yugoslavia would be accorded under the most-favored-nation provision whatever rights in respect of the acquisition, possession, or disposition of property in Yugoslavia were accorded to nationals of a third country (for example, Poland under the 1923 treaty which the note cites) who were resident therein. However, American citizens outside Yugoslavia would not be accorded rights similar to rights under Yugoslav law enjoyed by Polish nationals who were not resident therein.

A review of the negotiating history of the 1881 Convention discloses nothing which supports the theory that the Governments of the United States and Serbia intended to provide that only some and not all of the nationals of the respective countries would be entitled to most-favored-nation treatment with respect to the acquisition, possession, and disposition of property.

In this connection, it appears to have been the consistent policy of the United States, as reflected in treaties concluded between 1850 and 1890, to accord rights of inheritance and succession to property to nationals of the other contracting party without regard to their residence at the time of the decedent's death.

As stated in the preamble thereto, the 1881 Convention was entered into for the purpose of "facilitating and developing the commercial relations established between the two countries". The restrictive view would probably produce results inconsistent with this purpose. For example, a national of one country, also resident therein, wishing to make an *inter vivos* disposition of property belonging to him and located in the other country would have been required to make the long and then arduous trip to the other country to effect the disposition. It seems equally inconsistent with the expressed purpose of the Convention to make an alien's rights of inheritance turn on his location at the time of decedent's death.

Therefore, in the absence of clear and unmistakable evidence of a contrary intention on the part of the negotiators, it appears that the interpretation most consistent with the purpose of the Convention, and with the policy reflected in treaties between the United States of America and other countries, is to interpret the words "in Serbia" and "in the United States" as referring to the place where property rights are granted rather than to the geographical location of the person claiming such rights. As thus construed, the provision would accord to nationals of either party *wherever resident* rights similar to those enjoyed by nationals of the most-favored-nation *wherever resident*. A review of all relevant corre-

spondence available at the National Archives indicates no intention contrary to this interpretation. As the Supreme Court has said:

"Treaties are to be construed in a broad and liberal spirit, and, when two constructions are possible, one restrictive of rights that may be claimed under it and the other favorable to them, the latter is to be preferred. *Hauenstein v. Lynham*, 100 U.S. 483, 487; *Geofroy v. Riggs*, supra, 271; *Tucker v. Alexandroff*, 183 U.S. 424, 437." *Asakura v. Seattle*, 265 U.S. 332, 342 (1924).

This note, of course, is not to be considered as having the character of an international agreement or as effecting any modification of the treaty.

Department of State, Washington, April 24, 1958.
211.683/4-1858

From the Ambassador of Yugoslavia to the Secretary of State, April 7, 1960:

No. 4306/60

The Ambassador of the Federal People's Republic of Yugoslavia presents his compliments to the Honorable the Secretary of State and has the honor to refer to their previous exchange of communications, No. 4298 of April 18, 1958, and No. 211.683/4-1858 of April 24, 1958, respectively, concerning the construction and meaning of Article II of the Convention of Commerce and Navigation concluded October 2/14, 1881, in force and effect between the United States and Yugoslavia. In consequence of the identity of the views expressed in such exchange of communications, the Ambassador considers it appropriate to draw the attention of the Secretary of State to the recent decision of the Supreme Court of the State

of Oregon in the cases of *State Land Board v. Kolorat* and *State Land Board v. Zekic*, 349 P.(2d) 255, rehearing denied March 2, 1960, wherein the provision of the Convention under reference was given a meaning and construction widely at variance with such views, and in express disregard thereof. The Court denied the right under such Convention of citizens and residents of Yugoslavia to inherit property in Oregon, and in the absence of other heirs, decreed such property to be escheated to the State.

In the circumstances, it is intended to apply as promptly as practicable, on behalf of the Yugoslav heirs, to the Supreme Court of the United States for a writ of certiorari to the Supreme Court of the State of Oregon, and the Secretary of State may wish to consider whether it would not be appropriate for the United States at the proper time to seek leave of the Supreme Court of the United States to file, as *amicus curiae*, a brief or other expression of its views, in support of such petition. The Government of Yugoslavia, no less than the Yugoslav heirs concerned, would welcome such action on the part of the United States because of the effect that the decision of the Supreme Court of the State of Oregon, if not reversed, may have on pending cases, and others that undoubtedly will arise in the future, not only in Oregon, but in other States, including, but not necessarily limited to, California, Montana, Arizona, Nevada, Iowa and Louisiana.

In view of the effect that the said decision may have on the mutual relations under the Convention of Commerce and Navigation of 1881 as well, the Yugoslav Ambassador would greatly appreciate it if the Honorable the Secretary of State would advise him of His views in the premises at His early convenience.

The Ambassador of the Federal People's Republic of Yugoslavia avails himself of this opportunity to renew to the Honorable the Secretary of State the assurances of his highest consideration.

Washington, D.C., April 7, 1960.

The Honorable, The Secretary of State, Washington, D.C.

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Office Supreme Court, U.S.

FILED

MAR. 15 1961

JAMES R. BROWNING, Clerk

In the Supreme Court of the United States

OCTOBER TERM, 1960

No. 102

ANDJA KOLOVRAT, DRAGO STOJIC, DRAGICA SUNJIC,
NEDA TURK, JOSIP BULGAN, JURE VIVANOVIC,
MARA TOLIC and MILAN STOJIC, and also BRANKO
KARADZOLE, Consul General of Yugoslavia at San Fran-
cisco, California, Petitioners

v.

STATE OF OREGON, acting by and through the State Land
Board, Respondent.

* LUTVO ZEKIC, IBRO ZEKIC, HABIBA TURKOVIC,
DZEDJA POPOVAC, SEFKO MURADBASIC, DIKA
MURADBASIC, MURTA BRKIC, MILKA ZEKIC, JAS-
MINA ZEKIC and RAJKA ZEKIC, and BRANKO KAR-
ADZOLE, Consul General of Yugoslavia at San Francisco,
California, Petitioners

v.

STATE OF OREGON, acting by and through the State Land
Board, Respondent.

ON WRIT OF CERTIORARI TO THE
SUPREME COURT OF THE STATE OF OREGON

BRIEF FOR THE RESPONDENT

ATTORNEY GENERAL
SUPREME COURT BUILDING
SALEM, OREGON.

ROBERT Y. THORNTON
Attorney General for Oregon
ARTHUR GARFIELD HIGGS
Assistant Attorney General
CATHERINE ZORN
Assistant Attorney General
Counsel for Respondent

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International Monetary Fund, Report of First 10 Years,	
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In the Supreme Court of the United States

OCTOBER TERM, 1960

No. 102

ANDJA KOLOVRAT, DRAGO STOJIC, DRAGICA SUNJIC,
NEDA TURK, JOSIP BULGAN, JUPE VIVANOVIC,
MAR. TOLIC and MILAN STOJIC, and also BRANKO
KARADZOLE, Consul General of Yugoslavia at San Fran-
cisco, California, Petitioners

v.

STATE OF OREGON, acting by and through the State Land
Board, Respondent.

LUTVO ZEKIC, IBRO ZEKIC, HABIBA TURKOVIC,
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STATE OF OREGON, acting by and through the State Land
Board, Respondent.

ON WRIT OF CERTIORARI TO THE
SUPREME COURT OF THE STATE OF OREGON

BRIEF FOR THE RESPONDENT

QUESTIONS PRESENTED

1. Whether or not Article II of the Treaty of Com-
merce between the United States of America and Serbia
of 1881, 22 Stat. 963 (R. 55, App. B, *infra*) covers succes-

sion by Yugoslavian nationals to property of American citizens dying and leaving property in the United States.

2. Whether or not the International Monetary Fund Agreement, 60 Stat. 1401, T.I.A.S. 1501 (R. 57), constitutes an overriding Federal policy forbidding Oregon from giving effect to its statute making the right of non-resident aliens to succeed to property from Oregon estates dependent upon the right of American heirs to take and receive payment of their foreign inheritances and legacies.

STATEMENT

Joe Stoich and Muharem Zekich died intestate in Oregon in December 1953 leaving estates of personal property. They were residents of Oregon and their United States citizenship is not questioned. Their sole surviving relatives were residents and nationals of Yugoslavia, who, together with Karadzole, the Consul General of Yugoslavia at San Francisco, California, their attorney in fact, are the petitioners. There being no other relatives of the decedents legally qualified to inherit, the State of Oregon filed petitions in the Circuit Court of the State of Oregon for Multnomah County for the escheat of the estates under the provisions of ORS 111.070. This statute conditions the right of nonresident aliens to inherit from Oregon decedent's estates upon the right of American heirs to take and receive payment in the United States of their inheritances or legacies

originating from the estates of decedents in the foreign country. (App. A)

The petitioners answered the State's petition for escheat by asserting that the rights required by ORS 111.070 existed between the United States and Yugoslavia and denying that the estates had escheated. No mention was made in either of the answers, as to the Treaty of Commerce and Navigation of 1881 with Serbia or of the International Monetary Fund Agreement (R 3,7).

The trial court held in favor of the petitioners and against the State of Oregon and entered its Order including findings prepared by petitioners on direction of the court. Again, no reference was contained in the Order or findings concerning the Treaty or the Monetary Fund Agreement (R 76, 79).

Because the basic facts and questions were substantially the same, the cases were consolidated, both in the trial court and on appeal. In determining this appeal, the Oregon Supreme Court addressed itself only to the question of the second right required by the Oregon statute as to whether there was a certain and enforceable right vested in American citizens to receive pay-

Section 111.070 (1), Oregon Revised Statutes, R. 83-84, App. A., *infra*, p. 34, pertinent here, reads:

"(1) The right of an alien not residing within the United States or its territories to take real or personal property or the proceeds thereof in this state by succession or testamentary disposition, upon the same terms and conditions as inhabitants and citizens of the United States, is dependent in each case:

"(a) Upon the existence of a reciprocal right upon the part of citizens of the United States to take real and personal property and the proceeds thereof upon the same terms and conditions as inhabitants and citizens of the country of which such alien is an inhabitant or citizen;

"(b) Upon the rights of citizens of the United States to receive by payment to them within the United States or its territories money originating from the estates of persons dying within such foreign country; * * *

ment in this country of the proceeds of their Yugoslavian inheritances (R. 86).

The Oregon Supreme Court reversed the trial court and held that petitioners had failed to meet the requirements of ORS 111.070 in that (1) the Yugoslavian foreign exchange laws and regulations (R. 87, 92) failed to give American heirs and legatees an unqualified legally enforceable right to receive payment of their Yugoslavian inheritances and legacies (R. 93-94); (2) that language in Article II of the Treaty of Commerce of 1881 with Serbia had the same import and meaning as language in Article IV of the German Treaty of 1923 (44 Stat. 2132) and did not cover nationals residing in their home countries with respect to testate or intestate succession of their property by nationals in the other country, the construction of the treaty being governed by *Clark v. Allen*, 331 U.S. 503, 91 L. Ed. 1633, 67 S. Ct. 1431 (R. 100); and (3) that the Bretton Woods Agreement (International Monetary Fund Agreement) in its terms recognized that countries may impose monetary restrictions such as the Yugoslavian foreign exchange laws but that the agreement did not support petitioners' thesis (R. 103).

It is not clear from petitioners' brief in the Oregon Supreme Court case, pp. 72-74, what legal significance they then attached to the International Monetary Fund Agreement or what specifically was their thesis (R. 102-103). Petitioners' thesis concerning the overriding effect of the International Monetary Fund Agreement is apparently a development in these proceedings for certiorari.

Realizing that the construction of a treaty is a matter for the courts rather than a political question, and having before it the construction of Article IV of the German Treaty of 1923 in *Clark v. Allen*, supra (331 U.S. 503, 515-516), as well as the construction of similar treaty language in the earlier cases cited in the *Clark* case, the Oregon Supreme Court properly held that Article II of the Serbian Treaty did not apply in the case of citizens of the United States residing in the United States with regard to the testate or intestate succession to their property by the nationals of the other country.

The construction of treaties being a matter of judicial determination by this Court and the construction of a similar applicable treaty provision having been made by the United States Supreme Court, such construction was binding, not only upon the Oregon court, but also upon the executive and legislative branches of the states and the United States. Being bound by this Court's construction of treaty language of identical meaning in the *Clark* case, the Oregon court was necessarily required to reject or disregard a construction at variance or in conflict with the construction of the United States Supreme Court.

Petitioners attempt to weaken the adherence of the Oregon Supreme Court to this Court's construction of the German treaty in *Clark v. Allen*, supra (331 U.S. 503), by charging that the Oregon court "misconceived" and "misread" the treaty provision and the decision in

the Clark case, that it arrived at a "mistaken" belief as to the decision in the case, and that the language quoted and summarized by the Oregon court from the Clark case "completely perverted" the treaty provisions and "plainly misstated" the holding of the Clark case (Pet. Br. 7-8).

The provisions of Article IV of the German Treaty of 1923 (44 Stat. 2132) as to personalty, considered in *Clark v. Allen*, supra (331 U.S. 503), and Article II of the Serbian Treaty of Commerce of 1881 (22 Stat. 963) were quoted in full in the opinion of the Oregon Supreme Court. In *re Stoich's Estate*, — Or. —, 349 P. (2d) 255, 263, 265 (R. 95, 98).

The unanimous opinion of this Court in *Clark v. Allen*, supra (331 U.S. 503), was written by Mr. Justice Douglas. We quote from the Clark opinion relating to the treaty as follows (331 U. S. 503, 514-516):

"*Third.* The problem of the personalty raises distinct questions. Article IV of the treaty contains the following provision pertaining to it:

'Nationals of either High Contracting Party may have full power to dispose of their personal property of every kind within the territories of the other, by testament, donation, or otherwise, and their heirs, legatees and donees, of whatsoever nationality, whether resident or non-resident, shall succeed to such personal property, and may take possession thereof, either by themselves or by others acting for them, and retain or dispose of the same at their pleasure subject to the payment of such charges only as the nationals of the High Contracting Party within whose territories such property may be or belong shall be liable to pay in like cases.'

"A practically identical provision of the Treaty of [April 10] 1844 with Wurttemberg, Art. III, 8 Stat. 588, 590, was before the Court in *Frederickson v. Louisiana*, 23 How (US) 445, 16 L ed 577. In that case the testator was a citizen of the United States, his legatees, being citizens and residents of Wurttemberg. Louisiana, where the testator was domiciled, levied a succession tax of 10 per cent on legatees not domiciled in the United States. The Court held that the treaty did not cover the 'case of a citizen or subject of the respective countries residing at home; and disposing of property there in favor of a citizen or subject of the other . . . ' pp 447, 448. That decision was made in 1860. In 1917 the Court followed it in cases involving three other treaties. *Petersen v. Iowa*, 245 US 170, 62 L ed 225, 38 S Ct 109; *Duus v. Brown*, 245 US 176, 62 L ed 228, 38 S Ct 111; *Skarderud v. Tax Commission*, 245 US 633, 62 L ed 522, 38 S Ct 133.

"The construction adopted by those cases is, to say the least, permissible when the syntax of the sentences dealing with realty and personalty is considered. So far as realty is concerned, the testator includes 'any person'; and the property covered is that within the territory of either of the high contracting parties. In case of personalty, the provision governs the right of 'nationals' of either contracting party to dispose of their property within the territory of the 'other' contracting party; and it is 'such personal property' that the 'heirs, legatees and donees' are entitled to take.

* * *


"We accordingly hold that Article IV of the treaty does not cover personalty located in this country and which an American citizen undertakes to leave to German nationals. * * *"

For the purposes of comparison and to dispel any doubt as to the correctness of the Oregon court's quota-

tions and summary of the language in the Clark case, we likewise quote from the opinion of the Oregon court concerning the treaty provisions (R. 96-99):

"*Clark v. Allen*, supra, decided June 9, 1947, becomes a holding of prime interest in this matter in that it was precipitated by a proceeding initiated under § 259, California Probate Code as it was in 1942. It will be remembered that section bears upon the rights of aliens not residing in the United States to take real or personal property in the state of California. And for the further reason that it construes a treaty provision similar to Article II of the Treaty of 1881.

"In the Clark case, Alvina Wagner, a resident of California, died in 1942. She left real and personal property situate in that state. By a will, dated December 23, 1941, she bequeathed her entire estate to four relatives who were nationals and residents of Germany. Six heirs at law, who were residents of California, filed a petition for determination of heirship in the probate proceeding, claiming that the German nationals were ineligible as legatees under § 259, supra, of the California Probate Code. It appears that at the time of the decision in Clark, there had never been a hearing on that petition. This, for the reason that in 1943 the Alien Property Custodian vested in himself all right, title and interest of the German nationals in Mrs. Wagner's estate. The Property Custodian thereupon instituted an action in the U.S. District Court against the executor under the will and the California heirs at law for a determination that the California heirs had no interest in the estate and that he was entitled to the entire net estate upon the conclusion of the administration. The District Court granted judgment for the Custodian on the pleadings (52 F Sup 850). The Circuit Court of Appeals reversed, holding that the District Court was without jurisdiction of the subject



matter (147 F2d 136). The case went thence to the Supreme Court on certiorari where it was held that the District Court had jurisdiction of the suit and remanded the cause to the Circuit Court of Appeals (9th CC) for consideration on the merits (326 US 490). The Circuit Court of Appeals thereafter held for the California heirs (156 F2d 653). The case was returned again to the Supreme Court on a petition for a writ of certiorari which was granted on the ground that the issues raised were of national importance.

"The defendants concede that the Clark case over the years has, since its pronouncement in 1947, come to be regarded as 'the cornerstone of the entire reciprocal inheritance rights structure as it was the first major decision by a court of last resort on the California reciprocity statute.'

"In *Clark v. Allen*, supra, the court was called upon to construe Article IV of the Treaty of Friendship, Commerce and Consular Rights made with Germany December 8, 1923 (44 Stat 2132). It had different provisions relating to the testamentary disposition of realty and personalty. Article IV of the Treaty, which is the provision of our interest, contained the following provisions as to the disposition of personalty:

"*Nationals of either High Contracting Party may [fol. 149] have full power to dispose of their personal property of every kind within the territories of the other, by testament, donation, or otherwise, and their heirs, legatees and donees, of whatsoever nationality, whether resident or non-resident, shall succeed to such personal property, and may take possession thereof, either by themselves or by others acting for them, and retain or dispose of the same at their pleasure subject to the payment of such duties or charges only as the nationals of the High Contracting Party within whose territories such property may*

be or belong shall be liable to pay in like cases.'
(Emphasis ours.) (91 L ed at 1644)

"We are of the opinion that the following words and phrases found in the German Treaty of 1923: 'Nationals of either High Contracting Party * * * within the territories of the other' are of the same import and meaning as the words and phrases found in Article II of the Treaty of 1881; that is, 'citizens of the United States in Serbia and Serbian subjects in the United States,' a phrasing which the defendants ascribe to Victorian English.

"In the Clark case, it was held that the language of Article IV of the German Treaty applied only to nationals of either of the party nations who were *within* the territory of the other. Mr. Justice Douglas speaking for the court, says at p 1664 L ed:

"* * * In case of personalty, the provision governs the right of "nationals" of either contracting party to dispose of their property within the territory of the "other" contracting party; and it is "such personal property" that the "heirs, legatees and donees" are entitled to take.

"Petitioner, however, presents a detailed account of the history of the clause which was not before the Court in *Frederickson v. Louisiana*, 23 How (US) 445, 16 L ed 577, *supra*, and which bears out the construction [fol. 150] that it grants the foreign heir the right to succeed to his inheritance or the proceeds thereof. But we do not stop to review that history. For the consistent judicial construction of the language since 1860 has given it a character which the treaty-making agencies have not seen fit to alter. And that construction is entirely consistent with the plain language of the treaty. We therefore do not deem it appropriate to change that construction at this late date, even though as an original matter the other view might have much to commend it.

"We accordingly hold that Article IV. of the treaty does not cover personalty located in this country and which an American citizen undertakes to leave to German nationals. * * *"

The Oregon court then referred to the case of *In re Arbulich's Estate*, 41 Cal. (2d) 86, 257 P. (2d) 433, in which the California court applied the United States Supreme Court's interpretation in the *Clark* case to the construction of Article II of the Serbian Treaty (R. 99-100). The Oregon Supreme Court then went on to say (R. 100):

"If we correctly appraise the position of defendants, they would, notwithstanding the doctrine of *Clark v. Allen*, supra, have us interpret the words 'in Serbia' and 'in the United States,' as they appear in Article II of the Treaty of 1881, as referring to the place where property rights are granted rather than to the geographical location of the person claiming them. If thus construed the provision would accord to the nationals of either party wherever resident rights similar to those enjoyed by nationals of the most favored nation wherever resident. But this we decline to do, being impressed that the construction given to the German Treaty in the *Clark* case applies with equal force to the Serbian Treaty of 1881, and as also held in *Arbulich's Estate*."

Error has been suggested as to the factual determination concerning receipt of payment by American heirs of their Yugoslavian inheritances (Pet. Br. 11-14). It is our understanding, however, that findings and determinations of fact by the state courts are conclusive and are not re-examined by the United States Supreme Court. We have therefore not undertaken a review and analysis

of the evidence, a review of which will be found in the Oregon Supreme Court briefs. The testimony and exhibits are in the case file transmitted to the Clerk of this Court. The factual situation in relation to statutes such as Oregon Revised Statutes 111.070, relative to the rights of inheritance and receipt of payment of foreign inheritances, is covered by *In re Estate of Krachler*, 199 Or. 448, 263 P. (2d) 769; *State Land Board v. Rogers*, 219 Or. 233, 347 P. (2d) 57; *In re Arbulich's Estate*, supra (257 P. (2d) 433), and cases in other jurisdictions cited in these opinions.

As has already been indicated, petitioners' thesis as to the International Monetary Fund Agreement was not clear in its brief on appeal in the Oregon Supreme Court (Resp. Br., Or. Sup. Ct., pp. 72-74). We are unable to find either in that brief or in the Oregon Supreme Court's opinion, rejecting their thesis, the theory of the overriding effect of the Monetary Fund Agreement urged by petitioners in these proceedings for certiorari. This thesis apparently presents the question here in the first instance.

SUMMARY OF ARGUMENT

I

As a general rule treaties, as other written documents and statutes, should be given effect as written in accordance with their terms. Because of the like import and meaning of the language used in Article II of the Serbian treaty as was used in Article IV of the

German treaty, the construction of the German treaty in *Clark v. Allen*, 331 U.S. 503, 91 L. Ed. 1633, is important.

The language "nationals of either High Contracting Party * * * within the territories of the other" used in Article IV of the German treaty is identical in meaning with the language "citizens of the United States in Serbia and Serbian subjects in the United States" used in Article II of the Serbian treaty. The decision in *Clark v. Allen*, supra, holding that the German treaty did not apply to the succession by German nationals to property in the United States of decedents who were American citizens governs the construction of the like language in the Serbian treaty. A historical background of negotiations of the treaty does not serve to alter a long continued judicial construction consistent with the plain language of the treaty, which the treaty-making agencies have not seen fit to change.

II

The application of a treaty in a given case and the construction of treaties are, as other questions of law, the peculiar province of the judiciary. The determination of this Court as to the construction of a treaty is binding on the state courts as well as on the legislative and executive branches of government.

Executive interpretations of a treaty should follow the interpretation of this Court where an applicable treaty construction exists. An executive interpretation of a treaty at variance with an existing applicable treaty construction of this Court must yield to this Court's interpretation.

III

The International Monetary Fund Agreement which permits the parties to the agreement to maintain foreign exchange control laws does not by reason of the fact that the United States is a party constitute an overriding federal policy forbidding Oregon from giving effect to its statute making the right of nonresident aliens to inherit dependent upon the right of American heirs and legatees to receive payment of their inheritances or legacies from the country in which the aliens reside.

Under the Monetary Fund Agreement the parties have recognized that they could impose unlimited monetary controls to regulate capital movements. Transfers of inherited funds appear to be capital transfers. The mere recognition by one party of the right of the other to impose exchange restrictions does not preclude or disparage the rights of the former. The United States has imposed no exchange restrictions and accordingly has not set up any overriding federal policy one way or the other with regard to capital transfers.

The Oregon statute, ORS 111.070, is a law of succession with respect to decedents' estates. The right to determine succession to a decedents' property is a matter of local law. Similarly, as was held in *Clark v. Allen*, supra (331 U.S. 503, 517), the Oregon statute is not a forbidden extension of state power into the field of foreign affairs which is exclusively reserved to the Federal Government.

ARGUMENT

I

The construction given by this Court in *Clark v. Allen*, 331 U.S. 503, 91 L. Ed. 1633, to the provision of Article IV of the German Treaty of Friendship, Commerce and Consular Rights of 1923 (44 Stat. 2132), relating to personalty, governs the construction of Article II of the Serbian Treaty of Commerce of 1881 (22 Stat. 963). By reason of language of like meaning in each of the treaties, Article II of the Serbian treaty, similarly as the German treaty, does not cover succession to property of an American citizen in the United States by a Yugoslav national in Yugoslavia.

As a general rule treaties, as other written documents, should be given effect as written in accordance with their terms. *Valentine v. United States*, 290 U.S. 9, 11, 81 L. Ed. 3, 9. The rule is summarized in 87 C.J.S., Treaties, § 13 a, where it is said:

"If the terms of a treaty are clear and unambiguous the courts must recognize and enforce it as written, notwithstanding the language of the treaty is inconsistent with the correspondence which preceded it; but if the treaty is open to construction the courts should endeavor to ascertain and give effect to the intention of the parties at the time the treaty was made. While various rules have been laid down expressly with respect to the construction of treaties, the courts in seeking to give effect to the intention of the parties usually adopt general rules similar to those which are applicable in the construction of statutes, contracts of individuals, and documents or written instruments generally."

In *Clark v. Allen*, 331 U.S. 503, 91 L. Ed. 1633, this Court had occasion to construe the provision of Article

IV of the Treaty of Friendship, Commerce and Consular Rights of 1923 between the United States and Germany (44 Stat. 2132) relating to personalty with respect to the succession to the personal property of an American citizen dying in the United States by German nationals. Because of the identity in meaning of the language in the German treaty and the Treaty of Commerce between the United States and Serbia of 1881 (22 Stat. 963), which is recognized as continuing in effect with Yugoslavia, the construction of the German treaty in *Clark v. Allen* governs.

In construing the treaty provision of the German treaty in *Clark v. Allen*, supra, this Court referred to the earlier cases involving similar treaty language as *Fredrickson v. Louisiana*, 23 How. (U.S.) 445, 16 L. Ed. 577 (Convention between the United States and Wurttemberg, 8 Stat. 588); *Petersen v. Iowa*, 245 U.S. 170 62 L. Ed. 225 (Treaty between the United States and Denmark, 8 Stat. 340, 11 Stat. 719); *Duus v. Brown*, 245 U.S. 176, 62 L. Ed. 228 (Swedish Treaty, 8 Stat. 60, 232, 346); and *Skardrud v. Tax Commission*, 245 U.S. 633, 62 L. Ed. 522 (Norwegian Treaty, 8 Stat. 60, 346).

In *Clark v. Allen* the petitioner presented an account of the history of the clause not before the Court in *Fredrickson v. Louisiana*, supra. However, this Court in its opinion written by Mr. Justice Douglas said (331 U.S. at 515):

“* * * In case of personalty, the provision governs the right of ‘nationals’ of either contracting party to dispose of their property within the terri-

tory of the 'other' contracting party; and it is 'such personal property' that the 'heirs, legatees and donees' are entitled to take.

"Petitioner, however, presents a detailed account of the history of the clause which was not before the Court in *Frederickson v. Louisiana*, 23 How (US) 445, 16 L ed 577, *supra*, and which bears out the construction that it grants the foreign heir the right to succeed to his inheritance or the proceeds thereof.

"But we do not stop to review that history. For the consistent judicial construction of the language since 1860 has given it a character which the treaty-making agencies have not seen fit to alter. And that construction is entirely consistent with the plain language of the treaty. We therefore do not deem it appropriate to change that construction at this late date, even though as an original matter the other view might have much to commend it."

For the purpose of comparison the pertinent provisions of both the German and Serbian treaties are quoted. Article IV of the German treaty relating to personality reads:

"*Nationals of either High Contracting Party may have full power to dispose of their personal property of every kind within the territories of the other, by testament, donation, or otherwise, and their heirs, legatees and donees, of whatsoever nationality, whether resident or non-resident, shall succeed to such personal property, and may take possession thereof, either by themselves or by others acting for them, and retain or dispose of the same at their pleasure subject to the payment of such duties or charges only as the nationals of the High Contracting Party within whose territories such property may be or belong shall be liable to pay in like cases.*" (Emphasis supplied.)

Article II of the Serbian [Yugoslav] treaty (22 Stat. 963) reads:

"In all that concerns the right of acquiring, possessing or disposing of every kind of property, real or personal, *citizens of the United States in Serbia and Serbian subjects in the United States*, shall enjoy the rights which the respective laws grant or shall grant in each of these states to the subjects of the most favored nation:

"*Within these limits*, and under the same conditions as the subjects of the most favored nation, *they* shall be at liberty to acquire and dispose of such property, whether by purchase, sale, donation, exchange, marriage contract, testament, inheritance, or in any other manner whatever, without being subject to any taxes, imposes or charges whatever, other or higher than those which are or shall be levied on natives or on the subjects of the most favored state.

"*They* shall likewise be at liberty to export freely the proceeds of the sale of their property, and their goods in general, without being subjected to pay any other or higher duties than those payable under similar circumstances by natives or by the subjects of the most favored state." (Emphasis supplied)

The language "Nationals of either High Contracting Party * * * within the territories of the other" used in the German treaty is but a paraphrase of the terms "citizens of the United States in Serbia and Serbian subjects in the United States" found in the Serbian treaty of 1881, continuing in effect as to Yugoslavia.

In both *In re Arbulich's Estate*, 41 Cal. (2d) 86, 257 P. (2d) 433, and *Lukich v. Department of Labor and Industries*, 176 Wash. 221, 29 P. 22d) 388, the language "Citizens of the United States in Serbia and Serbian sub-

jects in the United States" was interpreted as meaning the *nationals* of the contracting nations *within the territorial limits* of the other.

The word "national" (used in Article IV of the German treaty) has been defined as "A word commonly used in diplomatic language and in treaties to indicate a citizen or subject of a given country." 3 Bouvier's Law Dictionary (Rawle's Third Revision). In this sense the language "citizens of the United States in Serbia and Serbian subjects in the United States" used in the American-Serbian treaty and "Nationals of either High Contracting Party * * * within the territories of the other" in the German treaty considered in *Clark v. Allen*, supra (331 U.S. 503), are indistinguishable in meaning.

The above emphasized language of the Yugoslavian treaty specifically designates and limits the class of persons to whom the treaty applies: It covers both *disposition and acquisition* of property by a citizen of the United States who may be in Yugoslavia or a citizen of Yugoslavia who may be in the United States, but it does not apply to nationals of either country within their own territory. The second paragraph of Article II is carefully introduced by the qualifying words "*Within these limits*." The word "*they*" in the second and third paragraphs of Article II can have no other antecedent than the words "citizens of the United States in Serbia and Serbian subjects in the United States." Only "*within these limits*" may *they* (citizens of the United States in Serbia [Yugoslavia] and Serbian [Yugoslavian] sub-

jects in the United States) enjoy the privileges of the most favored nation.

Petitioners concede that the Clark case decided that the German Treaty of 1923 "did not apply to the succession by German nationals to personal property in the United States of decedents who were American nationals" (Pet. Br. 9). The Clark decision took into consideration the whereabouts of both the decedent and her heirs. In analyzing *Frederickson v. Louisiana*, 23 How. (US) 445, 16 L. Ed. 577, the opinion in the Clark case points out that the testator was a citizen of the United States, domiciled in Louisiana, and that the legatees were citizens and residents of Wurttemberg, not domiciled in the United States. *Clark v. Allen*, supra. (331 US at 515). In its holding as to the application of the German treaty to the facts in the Clark case, the opinion determine that the treaty provision "does not cover personalty located in this country, and which an American citizen undertakes to leave to German nationals." *Clark v. Allen*, supra (331 U.S. 503, 516).

Upon finding that the language in Article II of the Serbian treaty had the same import and meaning as that in Article IV of the German treaty, the Oregon court followed the pattern of interpretation in the Clark case and held, in effect, that Article II of the Serbian treaty did not cover succession by Yugoslavian nationals to property in Oregon of decedents who were American citizens.

The language of a treaty must be read in context and in relation to the treaty as a whole. If the nego-

tiators intended to restrict the rights granted by the provisions to the nationals of one country in the territory of the other, it is difficult to think of more apt language better suited to accomplish precisely that purpose.

The language "citizens of the United States in Serbia and Serbian subjects in the United States" is not unique to Article II but is also found in other provisions of the Serbian treaty.

Article I reads:

"There shall be reciprocally full and entire liberty of commerce and navigation between the citizens and subjects of the two high contracting powers, *who shall be at liberty to establish themselves freely in each other's territory.*

"Citizens of the United States in Serbia and Serbian subjects in the United States shall reciprocally, on conforming to the laws of the country, be at liberty freely to enter, travel or reside in any part of the respective territories, to carry on their business, and shall enjoy in this respect for their persons and property the same protection as that enjoyed by natives or by the subjects of the most favored nation.

* * *

"In like manner in all that relates to local taxes, customs, formalities, brokerage, patterns or samples introduced by commercial travellers, and all other matters connected with trade, *citizens of the United States in Serbia and Serbian subjects in the United States shall enjoy the treatment of the most favored nation, and all the rights, privileges, exemptions and immunities of any kind enjoyed with respect to commerce and industry by the citizens or subjects of the high contracting parties, or which are or may be hereafter conceded to the subjects of any third power, shall be extended to the citizens or subjects of the other.*" (Emphasis supplied.)

Again, Article IV reads:

"Citizens of the United States in Serbia and Serbian subjects in the United States shall be reciprocally exempted from all personal service, whether in the army by land or by sea; whether in the national guard or militia; from billeting; from all contributions, whether pecuniary or in kind, destined as a compensation for personal service; from all forced loans, and from all military exactions or requisitions. The liabilities, however, arising out of the possession of real property, and for military loans and requisitions to which all the natives might be called upon to contribute as proprietors of real property or as farmers, shall be excepted.

"They shall be equally exempted from all obligatory official, judicial, administrative or municipal functions whatever."

* * *

Other articles of the treaty are not so qualified, and presumably under them broad privileges may, no doubt, be enjoyed.

Language similar to the terms "citizens of the United States in Serbia and Serbian subjects in the United States" appears in the treaty between Roumania and the United States of 1881, approved by Congress but apparently never concluded with Roumania, and also in the treaties between Serbia and Great Britain, and Roumania and Great Britain, also negotiated about that time.

An interesting historical background is presented in the brief of the United States as amicus curiae as to documents and correspondence of Edward Schuyler and John A. Kasson who negotiated the Roumanian and Serbian treaties with the United States. (The brief of the United States advises this documentary material has

been deposited with the Clerk of the United States Supreme Court.) The clarity of language used by Schuyler and Kasson in this correspondence again buttresses the conclusion that the language in question in the Serbian treaty is not stilted English, but purposefully chosen to convey a particular meaning.

From this documentary material it appears that the treaties which Roumania and Serbia had negotiated or concluded with other countries, and particularly the Roumanian and Serbian treaties with Great Britain, served as models for the treaties of Roumania and Serbia with the United States. See Schuyler's dispatches to the Secretary of State, dated November 29, 1880, and January 4, 1881, and copies of treaties between Roumania and Great Britain concluded April 5, 1880, and Serbia and Great Britain concluded January 30, 1880. In these treaties language similar to that here under consideration in the Serbian treaty with the United States also appears and evidences a particular intent.

As already mentioned, historical material of this kind was furnished in *Clark v. Allen*, supra (331 U.S. 503, 515, 516). Declining a review of that history, the opinion pointed out that a consistent judicial construction had given the language a fixed character which treaty-making agencies had not seen fit to change, and, since that construction was consistent with the plain language of the treaty, the Court would not change it.

Treaties are the subject of careful consideration before they are entered into and are drawn by persons competent to choose apt words to express their mean-

ing: *Rocca v. Thompson*, 223 U.S. 317, 332. As shown by the cases cited supra in this brief, a distinction in treaties between citizens and noncitizens within a country is normal and not uncommon. A "most favored nation" clause is limited to such matters as are within the subject matter of the particular treaty in which it is contained. *Lukich v. Department of Labor and Industries*, 176 Wash. 221, 29 P. (2d) 388, 390.

In the *Lukich* case the Washington court commented upon the construction of the Yugoslavian treaty in relation to the most favored nation clause as follows (29 P. (2d) 388 at p. 389):

"The question here presented turns upon the construction to be given to the convention between the two countries. It is important to note that article 1 of the convention contains the '*most favored nation*' clause, which provision is well known in international law, and occurs in many treaties which concern the rights of nationals of the respective high contracting parties while residing in the territory of the other. *Generally speaking, the effect of this clause is to grant to the nationals of the contracting parties, while within the territorial limits of the other, all rights, privileges, and immunities, which in the past have been granted by the treaty or which may in the future be so granted to the nationals of other nations along the same lines covered in the treaty in question. * * **" (Emphasis supplied)

The second paragraph of Article II of the Serbian treaty carefully limits the clause by the restrictive words "Within these limits." This phrase confines and qualifies the terms of the "most favored nation" clause.

As was said in *Valentine v. United States*, 299 U.S. 5, 11, 81 L. Ed. 3, 9:

"Examining the treaty in that aspect [discretion of the Executive on extradition], it is our duty to interpret it according to its terms. These must be fairly construed, but we cannot add to or detract from them."

Since the language defining the class to whom Article II of the Yugoslavian treaty and Article IV of the German treaty apply is identical in meaning, the interpretation of the German treaty in *Clark v. Allen*, supra, governs the interpretation of Article II of the Yugoslavian treaty.

II

The application of a treaty and its construction are the peculiar province of the judiciary and not matters of executive or legislative determination.

The question whether a treaty of the United States is to be construed by the executive branch of government or otherwise has long since been answered by this Court. In *Jones v. Meehan*, 175 U.S. 1, 32, 44 L. Ed. 49, 62, this Court said:

"* * * The construction of treaties is the *peculiar province of the judiciary*; and, except in cases purely political, Congress has no constitutional power to settle the rights under a treaty, or to affect titles already granted by the treaty itself. *Wilson v. Wall*, 6 Wall. 83, 89, 18 L. ed. 727, 729; *Reichart v. Felps*, 6 Wall. 160, 18 L. ed. 849; *Smith v. Stevens*, 10 Wall. 321, 327, 19 L. ed. 933, 935; *Holden v. Joy*, 17 Wall. 211, 247, 21 L. ed. 523, 535." (Emphasis supplied)

The application of a treaty to a given case and its construction are, as any other law, questions for the courts: *Hamilton v. Erie R.R. Co.*, 219 N.Y. 343, 114 N.E. 399, 402.

This principle in relation to the interpretation of a treaty by the State Department and a representative of a foreign country is expounded by Secretary of State Knox upon the request of the Mexican Government for an exchange of notes interpreting a provision of the extradition treaty (V Hackworth, Digest of International Law, 399) as follows:

"The department regrets to say that it deems it inadvisable to exchange notes in the sense proposed in your note, since even if the department did exchange notes setting forth an understanding as suggested by you, such notes would not, so far as the internal affairs of this Government are concerned, have the status either of a treaty or of a law, but would be merely an executive interpretation of the treaty and of the Federal statutes. This would not be binding upon the courts of this country, which might at any time disregard the agreement incorporated in the notes, in which case it would not be possible for the department to control their decision.

* * *

The note of the State Department of April 24, 1958, interpreting Article II of the Yugoslavian treaty, (Pet. Br. 29-31 and App D, p. 7a) is at variance with the interpretation of this Court of similar language in the German treaty considered in *Clark v. Allen*, supra (331 U.S. 503). However, the note itself concludes by recognizing that it "is not to be considered as having

the character of an international agreement or as effecting any modification of the treaty."

Whether the construction placed upon the treaty by the executive branch of government or a foreign country is binding is aptly discussed in *Ex parte Charlton*, 185 F. 880, 886 (aff'd. in 299 U.S. 447), in which it was said:

"* * * Undoubtedly, in view that treaties are made a part of the supreme law of the land by the Constitution which authorizes them, the courts are bound to construe such treaties as they are bound to construe any other law of the land when properly presented for interpretation, and, while the courts will give due consideration to the construction placed upon a treaty by the executive or diplomatic branches of the government, yet upon the courts is placed the duty of acting independently, and to accept full responsibility in determining the construction that is to be given to the treaties. And further, inasmuch as the treaty is by the Constitution made a law of the land, the construction placed upon some of its provisions by the departments of the foreign country with whom the treaty is made, executive, legislative, or judicial, is not controlling. The fact that our courts' interpretation of the true meaning of such provisions may not be acquiesced in by the foreign government is of no consequence when the question is one of enforcing such treaty provisions in this country, and over a person who is within its jurisdiction."

Like any other law or contract, a treaty must be construed according to its terms. Language contained in a treaty cannot be rejected as surplusage nor can it be said to have been inserted carelessly or inadvisedly. *Foster v. Neilson*, 2 Pet. (U.S.) 253, 308-309. The language of Article II of the Yugoslavian treaty becomes

"stilted" only when the construction urged by petitioners is attempted to be applied.

III

The International Monetary Fund Agreement which permits parties to the agreement to maintain foreign exchange control laws does not by reason of the fact that the United States is a party to the Agreement constitute an overriding federal policy forbidding the State of Oregon from giving effect to its statute making the right of nonresident aliens to inherit dependent upon the right of American heirs and legatees to receive payment of their inheritances or legacies from the country in which the aliens reside.

It is recognized that the International Monetary Fund Agreement permits the member nations to maintain foreign exchange control laws restricting international exchange transactions within the framework of the agreement. It is not the purpose of the Fund, however, to encourage such monetary restrictions, but rather its policy has been one of toleration, the object of the Fund being to secure withdrawal of exchange restrictions as soon as possible. This policy is expressed in the Annual Report of the Monetary Fund, 1954, page 78, where it is said:

"The Fund has made a careful examination of the restrictive system of each member country which still avails itself of the protection of Article XIV. Where the Fund has raised no objection to the maintenance of existing restrictions, its view that restrictive practices should be of a temporary character and its intention to pursue the matter further in later consultations have been noted. In such cases the Fund has

urged serious consideration of measures that would facilitate the elimination of the restrictive practices.

* * *

While § 1(a) of Article VI of the Agreement (R. 58-59) relating to capital transfers provides that a member may not make "net use" of the Fund's resources to meet a large or sustained outflow of capital and that the member may, in such event, be requested by the Fund to impose controls, § 1(b) of this Article states that nothing in the Section should be deemed:

"(i) to prevent the use of the resources of the Fund for capital transactions of reasonable amount required for the expansion of exports or in the ordinary course of trade, banking or other business, or

"(ii) to effect capital movements which are met out of a member's own resources of gold and foreign exchange, but members undertake that such capital movements will be in accordance with the purposes of the Fund."

Section 3 of Article VI, as pertinent, provides (R. 59):

"Members may exercise such controls as are necessary to *regulate international capital movements*, but no member may *exercise these controls* in a manner which will restrict payments for *current* transactions
* * *" (Emphasis supplied.)

Petitioners' brief, pp. 44-45, refers to Article VII of the Agreement (R. 60) and sets forth the interpretation of the Executive Directors as to § 2 (b) relating to exchange contracts. It appears, however, Article VIII, § 2, relates to *current* payments rather than *capital* trans-

fers, and, accordingly, the interpretation does not appear to be applicable.

Petitioners' brief, pp. 41-42, recognizes that inheritances are "capital" and that the transfer of inherited funds are "capital transfers" over which the members of the Fund are permitted to exercise controls. The United States in its brief as *amicus curiae*, p. 32, upon reviewing the provisions of the Monetary Fund Agreement, points out that both the United States and Yugoslavia as signatories to the Agreement recognized "that either or both could impose unlimited monetary controls to regulate capital movements." The Annual Report of the International Monetary Fund, 1947, p. 33, confirms the right of members to control capital movements, stating:

"Control of capital movements is permitted to Fund members at all times."

Accordingly, if transfers of inherited funds are "capital transfers" or "capital movements," then both the United States and Yugoslavia are free to control capital transfers or not as they choose.

Recognition by the parties to the Agreement of the right of a member to exercise exchange controls, however, does not operate to affect or curtail the rights of other members in this area. In this respect the United States by becoming a party to the Agreement sets up no overriding federal policy one way or the other with regard to capital transfers, and the situation remains the same as to state statutes concerning the rights of inherit-

ance from its citizens as it was when *Clark v. Allen*, supra (331 U.S. 503), was decided.

Petitioners' brief, p. 49, cites the provision in Article II, 1(c), of the Economic Cooperation Agreement of 1952 between the United States and Yugoslavia, T.I. A.S. 2384, and that in Title 22 U.S.C. § 1513 (b) (2) providing for the taking of steps and endeavors by the recipient country to stabilize its currency, etc., with the suggestion that such requirements include the regulation of foreign exchange transactions.

However, the International Monetary Fund Reports have consistently stressed as objectives the elimination of exchange restrictions and the restoration of free convertibility of currencies. In its Report entitled "The First 10 Years of the International Monetary Fund," August 24, 1956, p. 5, it is said:

"No doubt, countries can gain temporary advantages at certain times by the use of restrictive and discriminatory measures which enable them to achieve a forced balance in their international payments. These advantages are quickly wiped out if other countries also impose restrictive and discriminatory measures. If many countries resort to such policies, they will, of course, ultimately balance their international payments, but at a level of trade so low that their own well-being and that of their trading partners will be impaired. On the other hand, policies directed toward the achievement of international balance through expansion of world trade will contribute to the growth in real income throughout the world."

In the Annual Report of the International Monetary Fund for 1952, p. 61, there was stated:

"As the period during which restrictions are applied is prolonged, the disadvantages resulting from their widespread application tend to increase, while their advantages tend to diminish."

In the Annual Report of the Fund for 1960, p. 122, the Report expressed gratification that the year 1959 "was particularly satisfactory in the lessening of exchange restrictions * * *"

Accordingly, it would seem, as indicated by the policy of the Fund, that while under the Economic Cooperation Agreement and Title 22 U.S.C. § 1513 (b) (2) exchange restrictions are permitted they are not necessarily required.

Mention has also been made in the briefs of the Pecuniary Claims Agreement of 1948 between the United States and Yugoslavia (62 Stat. 2658; T.I.A.S. 1803; R. 52-53); however, the agreement does not preclude operation of foreign exchange laws but rather, in Article 11, indicates restrictions as to capital transfers are applicable.

Article 11 provides:

"The Government of Yugoslavia agrees to give sympathetic consideration to applications for transfers to the United States of deposits in banks of Yugoslavia and other similar forms of capital owned by nationals of the United States, where the amounts involved are small but which, in view of the circumstances, are of substantial importance to the persons requesting the transfers."

The Oregon statute, ORS 111.070, supra, before this Court is not an exchange control regulation nor an entry by the state into the field of foreign affairs. The Oregon statute is a law of succession of this state as was § 259 of the California Probate Code considered in *Clark v Allen*, supra (331 U.S. 503, 517). See *In re Estate of Krachler*, supra (199 Or. 448, 454, 263 P. (2d) 769, 772); *In re Knutzen's Estate*, 41 Cal. (2d) 573, 191 P. (2d) 747, 751. The right to determine the succession to a decedent's property is a matter of local law. *Clark v. Allen*, supra; *Mager v. Grima*, 8 How. (U.S.) 490, 12 L. Ed 1168. In the absence of an overriding federal policy, the state statute prevails.

In *Clark v. Allen*, supra (331 U.S. 503, 517), the California statute similar to the Oregon statute was challenged as an extension of state power into the field of foreign affairs which was exclusively reserved to the Federal Government. This Court rejected the contention, pointing out that California had not entered the domain of negotiating with a foreign country or making a compact with it. The same is equally true with regard to the Oregon statute.

CONCLUSION

In conclusion, it is respectfully submitted that the decision of the Oregon Supreme Court was correct and should therefore be affirmed.

Respectfully submitted,

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APPENDIX A

OREGON REVISED STATUTES 111.070

"(1) The right of an alien not residing within the United States or its territories to take either real or personal property or the proceeds thereof in this state by succession or testamentary disposition, upon the same terms and conditions as inhabitants and citizens of the United States, is dependent in each case:

"(a) Upon the existence of a reciprocal right upon the part of citizens of the United States to take real and personal property and the proceeds thereof upon the same terms and conditions as inhabitants and citizens of the country of which such alien is an inhabitant or citizen;

"(b) Upon the rights of citizens of the United States to receive by payment to them within the United States or its territories money originating from the estates of persons dying within such foreign country; and

"(c) Upon proof that such foreign heirs, distributees, devisees or legatees may receive the benefit, use or control of money or property from estates of persons dying in this state without confiscation, in whole or in part, by the governments of such foreign countries.

"(2) The burden is upon such nonresident alien to establish the fact of existence of the reciprocal rights set forth in subsection (1) of this section.

"(3) If such reciprocal rights are not found to exist and if no heir, devisee or legatee other than such alien is found eligible to take such property, the property shall be disposed of as escheated property."

APPENDIX B**Treaty of Commerce Between the United States of
America and Serbia, concluded October, 1881****Article II**

"In all that concerns the right of acquiring, possessing, or disposing of every kind of property, real or personal, citizens of the United States, in Serbia and Serbian subjects in the United States, shall enjoy the rights which the respective laws grant or shall grant in each of these states to the subjects of the most favored nation.

"Within these limits, and under the same conditions as the subjects of the most favored nation, they shall be at liberty to acquire and dispose of such property, whether by purchase, sale, donation, exchange, marriage contract, testament, inheritance, or in any other manner whatever, without being subject to any taxes, imposts or charges whatever, other or higher than those which are or shall be levied on natives or on the subjects of the most favored state.

"They shall likewise be at liberty to export freely the proceeds of the sale of their property, and their goods in general, without being subjected to pay any other or higher duties than those payable under similar circumstances by natives or by the subjects of the most favored state."

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Office Supreme Court, U.S.

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JAMES R. BROWNING, Clerk

IN THE
Supreme Court of the United States

OCTOBER TERM, 1960

No. 102

ANDJA KOLOVRAT, DRAGO STOJIC, DRAGICA SUNJIC,
NEDA TURK, JOSIP BULGAN, JURE ZIVANOVIC,
MARA TOLIC and MILAN STOJIC, and also BRANKO
KARADZOLE, Consul General of Yugoslavia at
San Francisco, California, *Petitioners*

v.

STATE OF OREGON, acting by and through the
State Land Board, *Respondent*

LUTVO ZEKIC, IBRO ZEKIC, HABIBA TURKOVIC, DZEDJA
POROVAC, SEFKO MURADBASIC, DIKA MURADBASIC,
MURTA BRKIC, MILKA ZEKIC, JASMINA ZEKIC and
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v.

STATE OF OREGON, acting by and through the
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On Writ of Certiorari to the Supreme Court of the
State of Oregon

REPLY BRIEF FOR PETITIONERS

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REPLY BRIEF FOR PETITIONERS

1.

The respondent's reliance on *Clark v. Allen*, 331 U.S. 503, 514-516 (1947) is predicated on its understanding and that of the Court below, shown by italics and asterisks and unequivocal language, R98, Resp. B. 18, that it was there held that in the German treaty with

which that case was concerned, the phrase "Nationals of either High Contracting Party" was modified by the phrase "within the territories of the other." Resp. B. 5-11, 13, 16-20; 25. Thus, in its opinion the Court below made it plain that in its view, R98; 349 P. 2d at 265:

In the *Clark* case, it was held that the language of Article IV of the German Treaty applied only to nationals of either of the party nations who were *within* the territory of the other.

That was not, however, the decision in *Clark*, where the issue was whether an American's bequest to a German of personal property located within the United States, came within this provision of the treaty with Germany:

Nationals of either High Contracting Party may have full power to dispose of their personal property of every kind, within the territories of the other, by testament, donation, or otherwise, and their heirs, legatees and donees, of whatsoever nationality, whether resident or non-resident, shall succeed to such personal property, and may take possession thereof, either by themselves or by others acting for them, and retain or dispose of the same at their pleasure subject to the payment of such duties or charges only as the nationals of the High Contracting Party within whose territories such property may be or belong shall be liable to pay in like cases.

Following *Federickson v. Louisiana*, 23 How. (U.S.) 445 (1860), where a treaty "practically identical" with the German treaty was involved, in *Clark* this Court construed "either High Contracting Party" to mean "one High Contracting Party" and expressly held, con-

trary to the respondent's view, and that of the Court below, that the phrase "within the territories of the other" modified "their personal property of every kind." 331 U.S. at 515. For *these* reasons this Court concluded that the treaty was inapplicable since the case was not one where a national of *one* country had bequeathed property located "within the territories of the *other*." That neither the applicability of the German treaty, nor the decision in *Clark* hinges on the whereabouts of the decedent or the beneficiary, is evident. It is equally evident that the language of Article II of the Convention, Pet. B. 1a, in no way resembles that of the German treaty. *Clark* affords the respondent no support.

Nor does the German treaty supply any analogy. For, the right of a legatee to inherit under the German treaty is without regard, as the treaty itself expressly provides, to his nationality or place of residence, but depends, as *Clark* makes clear, upon the decedent being a citizen of one country and the legacy being property within the other. On the other hand, as the respondent concedes, Resp. B. 19, Article II of the Convention "covers both *disposition and acquisition*" of property in one country by citizens of the other, wholly without reference to the nationality or residence of the donee in the case of disposition, or the nationality or residence of the donor in the case of acquisition. Pet. B. 1a. Thus, it is immaterial here, although it was decisive in *Clark*, that the donor as well as the property was American. For this is a case of acquisition, and the petitioners' right to inherit under Article II of the Convention derives from the location of the property in the United States and their Yugoslav citizenship, wholly unaffected by the

nationality or residence of the donor. Whether the right granted by Article II of the Convention to citizens of one country to acquire property located in the other is, however, limited to such citizens of the one as are within the other, is a question on the resolution of which neither *Clark* nor the German treaty has any bearing.

The question here is not, as respondent seems to suggest whether Article II of the Convention "covers succession by Yugoslavian nationals to property of American citizens dying and leaving property in the United States," Resp. B. 2, for the holding of the Court below was not, as respondent summarizes it, that Article II "did not cover nationals residing in their home countries with respect to testate or intestate succession of *their* properties by nationals in the other country * * *." Resp. B. 4. On the contrary, the decision of the Court below was based squarely on the residence of the petitioners in Yugoslavia and nothing further, other than its misunderstanding of *Clark*. Thus, in rejecting the petitioners' construction of Article II, the Court below said, R100; 349 P. 2d at 266:

If we correctly appraise the position of defendants, they would, notwithstanding the doctrine of *Clark v. Allen*, supra, have us interpret the words "in Serbia" and "in the United States", as they appear in Article II * * *, as referring to the place where property rights are granted rather than to the geographical location of the person claiming them. If thus construed, the provision would accord to the nationals of either party wherever resident rights similar to those enjoyed by nationals of the most favored nation wherever resident. But this we decline to do, being impressed that the construction given to the German Treaty in the *Clark* case applies with equal force to the Serbian Treaty of 1881 * * *.

This controversy stems from petitioners' claim, as citizens of Yugoslavia, of the right under Article II of the Convention "to acquire * * * property * * * by inheritance" in the United States, and the holding of the Court below was that Article II reserves such right only to citizens of Yugoslavia who are within the United States. The question here is, accordingly, as petitioners and the *amicus* have stated it. Pet. B. 2; Am. B. 2. The ease with which the respondent has confused the holding of the Court below with what was held in *Clark* serves to emphasize how far the Court below misread both *Clark* and the treaty provision with which it was concerned. The respondent, however, completes the circle when it asserts that the meaning it would attribute to Article II is that, Resp. B. 19:

It covers * * * *acquisition* of property by * * * a citizen of Yugoslavia who may be in the United States, but it does not apply to * * * [those] within their own territory.

2.

The respondent has now made it plain that its construction of Article II of the Convention is that, Resp. B. 19:

It covers both *disposition and acquisition* of property by a citizen of the United States who may be in Yugoslavia or a citizen of Yugoslavia who may be in the United States, but it does not apply to nationals of either country within their own territory. [Emphasis as in the original]

But, the respondent does not dispute that the consequences of so construing Article II, i.e., as granting only to such citizens of one country as may be within the other, the right to acquire (and to dispose of)

property located in the other, would be utterly incompatible with the Convention's express purpose of "facilitating and developing the commercial relations" between the two countries. Pet. B. 20-30. Nor does the respondent undertake to say why a construction of Article II, which would clearly frustrate the achievement of the Convention's very purpose, should be adopted despite the salutary principle that requires the rejection of a construction that is "inconsistent with the general purpose and object" of a treaty, or that would make it "null and inefficient." *Sullivan v. Kidd*, 254 U.S. 433, 440 (1921); *DeGeofroy v. Riggs*, 133 U.S. 258, 270 (1890).

Respondent relies on the use of the disputed phrase in the context of certain portions of Articles I and IV of the Convention as supporting its construction. Resp. B. 20-22. But, the consequences of applying respondent's construction to such portions of Articles I and IV, would be wholly inconsistent with the Convention's purpose. For, as respondent would construe Article I, its mutual assurances of national or most-favored-nation treatment in matters of taxation, customs, "and all other matters connected with trade," and relative to "all the rights, privileges, exemptions and immunities of any kind * * * with respect to commerce," would extend only to citizens of the United States "who may be in Yugoslavia," and to citizens of Yugoslavia "who may be in the United States."

Accordingly, under respondent's construction, the Convention would not bar either country from grossly discriminating in these respects against citizens of the other who remain at home but engage in trade or commerce with it. Since international trade and commerce are largely, if not almost exclusively conducted by

merchants, corporate and other, who remain in their own countries; Pet. B. 23, 24, respondent's construction of the disputed phrase, as applied to Article I, would render the Convention completely ineffectual as a means of "facilitating and developing * * * commercial relations," which is its express purpose. Moreover, since at the time the Convention was negotiated and concluded, there were "few or no Americans residing in Serbia," Pet. B. 38, 39, it is hardly likely that the United States would have thought it worthwhile to enter into a commercial convention with Serbia which protected American merchants from discrimination in matters affecting commerce and trade, only if they were in Serbia.

Similarly, as applied to the portion of Article IV cited, Resp. B. 22, respondent's construction of the disputed phrase would exclude merchants of one country remaining at home but engaging in trade and commerce with the other, from the exemptions it provides from "billetting; * * * all forced loans, and from all military exactions or requisitions," and their warehouses, goods and credits in the other country would be completely without protection against such practices. The same considerations as weigh against respondent's construction of Article I are equally applicable here. Furthermore, the then recent achievement by Serbia of her independence, and the unsettled conditions prevailing there and generally in the Balkans when the Convention was concluded,¹ would seem to militate strongly against attributing to the United States any purpose to exclude the property in Serbia of any American from the exemptions provided by Article IV.

¹ See, e.g., Hazen, *Europe Since 1815* (1923) 564-577.

Neither *In re Arbulich's Estate*, 41 Cal. 2d 86, 257 P. 2d 433, nor *Lukich v. Department of Labor and Industries*, 176 Wash. 221, 29 P. 2d 388, on which respondent relies, Resp. B. 18, 24, is any authority for its construction of Article II. Thus, in *Arbulich*, while the Court "noted" that the disputed phrase "*seemingly*" limited the grant of rights in Article II to citizens of one country who were within the other, it held that even if Article II gave a Yugoslav not within the United States rights of inheritance with respect to American property, 257 P. 2d at 437:

the rights granted are only those given * * * "to the subjects of the most favoured nation" and do not purport to equal the rights given or guaranteed by each of the contracting nations to *its own* citizens. Consequently the treaty provisions do not establish the reciprocal rights required by the Probate Code.

In *Lukich* the Convention's most-favored-nation clause was held not to extend to Yugoslavs rights under workmen's compensation laws granted by treaty to citizens of other countries, since the Convention was not to be construed as including such rights within its purview, 29 P. 2d at 390. Clearly, it was whether such rights were "along the same lines [as those] covered" by the Convention, and not the meaning of the phrase here in dispute, that was the question of construction referred to in the passage respondent quotes. Resp. B. 24. For, the opinion immediately continues: "It follows then that nationals of Yugoslavia are entitled to the benefit of the * * * 'most favored nation' clause of the convention * * * subject to the rules governing the construction of treaties". No authority is cited, and there is none to support any thesis that the most

favoured nation clause of itself imports a geographical limitation, and what was said in this regard must be taken in the context of the case, which pertained to the death in the United States of a Yugoslav workman. See, e.g., *V. Hackworth, Dig. Int. L.*, 269-296.

3.

There is, of course, no question but that it is for the Courts to determine the construction to be given a treaty, and the petitioners do not contend otherwise as the respondent would imply. Resp. B. 25-28. But in its day-to-day conduct of foreign affairs and protection of American rights abroad, the Executive must necessarily, and does construe international agreements to which the United States is a party.² While, concededly, such constructions are not *binding* on the Courts, they are not to be disregarded, as the respondent seems to contend. On the contrary, this Court has held that in construing a treaty, courts must "be care-

² The truncated 1910 statement of Secretary Knox quoted by the respondent, Resp. B. 26, does not reflect any policy of the State Department, then or at any other time, against construing treaties. The Department has on innumerable occasions undertaken to construe treaties, in exchanges of notes and otherwise. See, e.g., *United States v. Pink*, 315 U.S. 203, 224 n. 7 (1942); *Factor v. Laubyheimer*, 290 U.S. 276, 295 (1933); *Sullivan v. Kidd*, 254 U.S. 433, 438 (1921); *Charlton v. Kelly*, 229 U.S. 447, 466, 472, 475 (1913); *Castro v. De Urquiza*, 16 Fed. 93, 98 (S.D.N.Y. 1883). The part of Secretary Knox' statement which the respondent fails to quote shows that his reason for not concurring in Mexico's construction of the treaty there concerned was that "it is not entirely clear to the department that the contention which you make regarding the meaning of Article VIII * * * is the only one which may properly be placed upon it * * *". *V. Hackworth, Dig. Int. L.* (1943) 399. Secretary Knox did not hesitate to construe a treaty when he was confident of its meaning. See, *Charlton v. Kelly*, *loc. cit. supra*.

ful to see that international engagements are faithfully kept and observed" and to that end, "the construction placed upon the treaty * * * and consistently adhered to by the Executive Department of the government, charged with the supervision of our foreign relations, should be given much weight." *Sullivan v. Kidd*, 254 U.S. 433, 442 (1921); *Charlton v. Kelly*, 229 U.S. 447, 468 (1913); *Factor v. Laubenheimer*, 290 U.S. 276, 295 (1933). Moreover, in the circumstances of this case, Pet. B. 29-33, the Executive construction here would appear to be entitled to even greater weight. Thus, in *United States v. Reid*, 73 F. 2d 153, 156 (9th Cir., 1934), cert. denied 299 U.S. 544, the Court said:

This historical attitude of the state department should be of great, if not controlling, weight in construing our treaty * * *

* * *

This rule would apply with even more cogency where the state department * * * negotiating with the other treaty-making power concerning the meaning and effect of a treaty, * * * insists upon a not unreasonable construction of its terms which is acquiesced in by the other power.

Somewhat similarly, the applicable principle is stated as follows in the American Law Institute's *Restatement of the Foreign Relations Law of the United States* (Tentative Draft No. 3, 1959), § 136:

In exercising the authority * * * to interpret international agreements * * * courts in the United States give great weight to the interpretations of the President. In applying this rule the courts take into account:

(a) The fact that a judicial interpretation contrary to an executive interpretation previously communicated to another party to the international agreement may result in difficulties

for the United States in the conduct of its foreign relations and possibly subject the United States to liability under international law for breach of the international agreement * * *.

4.

It may be, as respondent appears to argue, that the commitments and arrangements of and under the International Monetary Fund Agreement are conceived as being temporary in character. Resp. B. 30-32. However, so long as they continue to be in effect, and so long as the United States continues to be a party to them, it must be irrelevant to the considerations here involved that the Fund and its members are constantly striving towards the permanent elimination of all foreign exchange controls, and are looking forward to the day when there will no longer be any need for them. The measures currently being taken to stem the flight of the dollar show clearly that even the United States cannot afford to leave unchecked those forces which in the circumstances of other countries must be met by exchange controls.

It is irrelevant, too, that the United States has not exercised its right under the Agreement to impose controls on capital transfers. Resp. B. 30. Oregon may not, of course, exercise the prerogative of the United States in this regard, any more than it can regulate foreign commerce where the policy of the United States is to leave it unregulated. *Chy Lung v. Freeman*, 92 U.S. 275 (1876); *Henderson v. Wickham*, 92 U.S. 259 (1876); The question here however, is not that, but whether Oregon may penalize citizens and residents of a member of the Fund that does exercise its right under the Agreement to control capital transfers, by denying them for that reason alone, rights that they would otherwise enjoy under its laws.

The resolution of this question does not depend, as respondent seems to think, on whether the foreign exchange controls involved are required, or are merely permitted under the Agreement, or whether Oregon's action amounts to an engagement in foreign affairs. Resp. B. 32. It depends, rather, on whether Oregon's admittedly domestic policy of discriminating in matters of inheritance against non-resident aliens who are citizens and residents of countries maintaining foreign exchange controls consistent with the Agreement, is "an obstacle to the accomplishment and execution of the full purpose and objectives of the Congress" in authorizing adherence to the Agreement and membership in the Fund. Pet. B. 46, 47. That Oregon's policy is such an obstacle is clear, for to penalize severely citizens of members of the Fund that exercise rights or privileges permitted to them under the Agreement and by the Fund, is to impose onerous conditions on the exercise of such rights and privileges. To contend that Oregon can do so, is to say that any of the fifty states can take counter measures within the ambit of its domestic policy, against citizens of any country which exercises a right or privilege reserved to it in an agreement with the United States, but which the state regards with disfavor. Cf. *Bacardi Corp. v. Domenech*, 311 U.S. 150 (1940).

The decrees of the Court below should be reversed.

Respectfully submitted,

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SUPREME COURT OF THE UNITED STATES

No. 102.—OCTOBER TERM, 1960.

Andja Kolovrat, et al., Petitioners. v. Oregon.	}	On Writ of Certiorari to the Supreme Court of Oregon.
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[May 1, 1961.]

MR. JUSTICE BLACK delivered the opinion of the Court.

Joe Stoich and Muharem Zekich died in Oregon in December 1953 without having made wills to dispose of personal property they owned in that State. Their only heirs and next of kin, who but for being aliens could have inherited this Oregon property under Oregon law, were brothers, sisters, nieces and nephews who were all residents and nationals of Yugoslavia. But § 111.070 of the Oregon Revised Statutes rather severely limits the rights of aliens not living in the United States to "take" either real or personal property or its proceeds in Oregon "by succession or testamentary disposition."¹ And subsec-

¹ (1) The right of an alien not residing within the United States or its territories to take either real or personal property or the proceeds thereof in this state by succession or testamentary disposition, upon the same terms and conditions as inhabitants and citizens of the United States, is dependent in each case:

"(a) Upon the existence of a reciprocal right upon the part of citizens of the United States to take real and personal property and the proceeds thereof upon the same terms and conditions as inhabitants and citizens of the country of which such alien is an inhabitant or citizen;

"(b) Upon the rights of citizens of the United States to receive by payment to them within the United States or its territories money originating from the estates of persons dying within such foreign country; and

"(c) Upon proof that such foreign heirs, distributees, devisees or legatees may receive the benefit, use or control of money or property

tion (3) of the same Oregon statute provides that where there are no next of kin except ineligible aliens and the deceased made no will, the property of the deceased shall be taken by the State as escheated property.

The State filed petitions under this provision in an Oregon Circuit Court to take for itself the personal property of both decedents,² alleging that there were no next of kin eligible to take under Ore. Rev. Stat. § 111.070. The answers filed by the Yugoslavian relatives and the San Francisco Consul General of that country (who are petitioners here) alleged that "in fact and in law reciprocal rights of inheritance as prescribed by O. R. S. 111.070 did exist" between the United States and Yugoslavia when the decedents died and that the Yugoslavian relatives therefore were eligible to take under Oregon law. After hearings in which evidence was taken, the trial court found that the reciprocal right of inheritance required by § 111.070 (a) did exist and that, both at the time the two deceased died and at the time of the trial, there existed "rights of citizens of the United States to receive payment to them within the United States . . . of moneys originating from the estates of persons dying within the country of Yugoslavia" as required by § 111.070 (b). The State Supreme Court reversed, holding that petitioners had failed to prove "the ultimate fact" that there existed "*as a matter of law an unqualified and enforceable right to receive as defined by ORS 111.070.*"³ It found

from estates of persons dying in this state without confiscation, in whole or in part, by the governments of such foreign countries.

"(2) The burden is upon such nonresident alien to establish the fact of existence of the reciprocal rights set forth in subsection (1) of this section."

² The Circuit Court consolidated the two cases and they have been treated as one since.

³ 349 P. 2d 255, 262.

instead that such an unqualified right did not exist because the laws of Yugoslavia give discretion to Yugoslavian authorities to control foreign exchange payments in a way that might prevent Americans from receiving the full value of Yugoslavian inheritances. It was accordingly held that Oregon state law standing alone barred these Yugoslavian nationals from inheriting their relatives' personal property in Oregon.

The state court went on to say that this holding disposes of petitioners' claims "[u]nless the area of alien succession over which the state of Oregon seeks to control through ORS 111.070, supra, has been preempted by some treaty agreement subsisting between Yugoslavia and the United States" at the time of the decedents' death. On this point the court said:

"We are mindful that rights of succession to property under local law may be affected by an overriding federal policy when a treaty makes different or conflicting arrangements. In such event, the state policy must give way. *Clark v. Allen*, 331 U. S. 503, 517"

Thus, recognizing quite properly that state policies as to the rights of aliens to inherit must give way under our Constitution's Supremacy Clause to "overriding" federal treaties and conflicting arrangements, the state court considered petitioners' contention, supported in this Court by the Government as *amicus curiae*, that petitioners were entitled to inherit this personal property because of an 1881 Treaty between the United States and Serbia, which country is now a part of Yugoslavia. The state court rejected this contention on the basis of its interpretation of the Treaty although it correctly recognized that the Treaty is still in effect between the United States and

Yugoslavia.⁴ The state court also rejected petitioners' contention that their claims could not be defeated solely because of the possible effect of the Yugoslavian Foreign Exchange Laws and Regulations since those laws and regulations admittedly meet the requirements of the Bretton Woods Agreement of 1944,⁵ to which both Yugoslavia and the United States are signatories. We granted certiorari because the cases involve important rights asserted in reliance upon federal treaty obligations. 364 U. S. 812.

For reasons to be stated, we hold that the 1881 Treaty does entitle petitioners to inherit personal property located in Oregon on the same basis as American next of kin and that these rights have not been taken away or impaired by the monetary policies of Yugoslavia exercised in accordance with later agreements between that country and the United States.

I.

The parts of the 1881 Treaty most relevant to our problem are set out below.⁶ The very restrictive meaning

⁴ The Treaty is reported at 22 Stat. 963. Official recognition that it is still in effect can be found in the Settlement of Pecuniary Claims Against Yugoslavia Agreement between the United States and Yugoslavia of July 19, 1948, 62 Stat. 2658, T. I. A. S. 1803, Art. 5.

⁵ 60 Stat. 1401, T. I. A. S. 1501.

⁶ The United States of America and His Highness the Prince of Serbia, animated by the desire of facilitating and developing the commercial relations established between the two countries, have determined with this object to conclude a treaty

ARTICLE I.

"There shall be reciprocally full and entire liberty of commerce and navigation between the citizens and subjects of the two high contracting powers, who shall be at liberty to establish themselves freely in each other's territory. . . . [Note 6 continued on p. 5.]

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given the Treaty by the Oregon Supreme Court is based chiefly on its interpretation of this language:

"In all that concerns the right of acquiring, possessing or disposing of every kind of property . . . citizens of the United States in Serbia and Serbian subjects in the United States, shall enjoy the rights which the respective laws grant . . . in each of these states to the subjects of the most favored nation."

This, the State Supreme Court held, means that the Treaty confers a right upon a United States citizen to acquire or inherit property in Serbia only if he is "in Serbia" and upon a Yugoslavian citizen to acquire property in the United States only if he is "in the United States." The state court's conclusion, therefore, was that the Yugoslavian complainants, not being residents of the United States, had no right under the Treaty to inherit from their relatives who died leaving property in Oregon. This is one plausible meaning of the quoted language, but

ARTICLE II.

"In all that concerns the right of acquiring, possessing or disposing of every kind of property, real or personal, citizens of the United States in Serbia and Serbian subjects in the United States, shall enjoy the rights which the respective laws grant or shall grant in each of these states to the subjects of the most favored nation.

"Within these limits, and under the same conditions as the subjects of the most favored nation, they shall be at liberty to acquire and dispose of such property, whether by purchase, sale, donation, exchange, marriage contract, testament, inheritance, or in any other manner whatever, without being subject to any taxes, imposts or charges whatever, other or higher than those which are or shall be levied on natives or on the subjects of the most favored State.

"They shall likewise be at liberty to export freely the proceeds of the sale of their property, and their goods in general, without being subjected to pay any other or higher duties than those payable under similar circumstances by natives or by the subjects of the most favored state."

it could just as plausibly mean that "in Serbia" all citizens of the United States shall enjoy inheritance rights and "in the United States" all Serbian subjects shall enjoy inheritance rights, and this interpretation would not restrict almost to the vanishing point the American and Yugoslavian nationals who would be benefited by the clause. We cannot accept the state court's more restrictive interpretation when we view the Treaty in the light of its entire language and history. This Court has many times set its face against treaty interpretations that unduly restrict rights a treaty is adopted to protect.⁷

The 1881 Treaty clearly declares its basic purpose to bring about "reciprocally full and entire liberty of commerce and navigation" between the two signatory nations so that their citizens "shall be at liberty to establish themselves freely in each other's territory." Their citizens are also to be free to receive, hold and dispose of property by trading, donation, marriage, inheritance or any other manner "under the same conditions as the subjects of the most favored nation." Thus, both paragraphs of Art. II of the Treaty which have pertinence here contain a "most favored nation" clause with regard to "acquiring, possessing or disposing of every kind of property." This clause means that each signatory grants to the other the broadest rights and privileges which it accords to any other nation in other treaties it has made or will make. In this connection we are pointed to a treaty of this country made with Argentina before the 1881 Treaty with Yugoslavia.

⁷ See, e. g., *Bacardi Corp. v. Domenech*, 311 U. S. 150, 163; *Jordan v. Tashiro*, 278 U. S. 123, 128-129.

Treaty of Friendship, Commerce, and Navigation, Between the United States and the Argentine Confederation of 1853, 10 Stat. 1005, 1009, 1 Malloy 20. Article IX of this Treaty provides: "In whatever relates to . . . acquiring and disposing of property of every sort and denomination, either by sale, donation, exchange, testament,

and treaties of Yugoslavia with Poland and Czechoslovakia," all of which unambiguously provide for the broadest kind of reciprocal rights of inheritance for nationals of the signatories which would precisely protect the right of these Yugoslavian claimants to inherit property of their American relatives.

The rights conferred by the 1881 Treaty, broadly stated as they are, would fall far short of what individuals would hope or desire for their complete fulfillment if one who by work and frugality had accumulated property as his own could be denied the gratification of leaving his property to those he loved the most, simply because his loved ones were living in another country where he and they were born. Moreover, if these rights of "acquiring, possessing or disposing of every kind of property" were not to be afforded to merchants and businessmen conducting their trade from their own homeland, the Treaty's effectiveness in achieving its express purpose of "facilitating . . . commercial relations" would obviously be severely limited.¹⁰ It is not in such a niggardly fashion that treaties designed to promote the freest kind of traffic, communications and associations among nations and their nationals should be interpreted, unless such an interpretation is required by the most compelling necessity. There is certainly no such compulsion in the 1881 Treaty's language or history.

or in any other manner whatsoever, . . . the citizens of the two contracting parties shall reciprocally enjoy the same privileges, liberties, and rights, as native citizens . . ."

⁹Yugoslav-Polish Treaty, 30 League of Nations Treaty Series 185; Yugoslav-Czechoslovakian Treaty, 85 League of Nations Treaty Series 455.

¹⁰Besides the obvious relevance of Art. II of the Treaty even when considered alone, Art. III specifically contemplates the interchange of "merchants, manufacturers and trades people" or "their clerks and agents."

While courts interpret treaties for themselves, the meaning given them by the departments of government particularly charged with their negotiation and enforcement are given great weight.¹¹ We have before us statements, in the form of diplomatic notes exchanged between the responsible agencies of the United States and of Yugoslavia, to the effect that the 1881 Treaty, now and always, has been construed as providing for inheritance by both countries' nationals without regard to the location of the property to be passed or the domiciles of the nationals. And relevant diplomatic correspondence and instructions issued by our State Department show that the 1881 Treaty was one of a series of commercial agreements which were negotiated and concluded on the basis of the most expansive principles of reciprocity. The Government's purpose in entering into that series of treaties was in general to put the citizens of the United States and citizens of other treaty countries on a par with regard to trading, commerce and property rights.¹²

The Oregon Supreme Court apparently thought itself bound to decide this question of treaty construction against petitioners because of our decision in *Clark v. Allen*, 331 U. S. 503. We do not agree. In that case we held that a 1923 Treaty with Germany did not confer rights upon German nationals residing in Germany to inherit from American citizens. The German Treaty did contain some language which, when considered in isolation, could be thought to be sufficiently similar to the controlling provisions of the 1881 Treaty to suggest that these parts of the two treaties should be interpreted to

¹¹ See, e. g., *Factor v. Laubenheimer*, 290 U. S. 276, 294-295.

¹² See, e. g., Report on Negotiations dated Nov. 30, 1850, printed as Senate Confidential Document No. 1, 31st Cong., 2d Sess., 5 Miller, *Treaties and Other International Acts of the United States* 861; D. S., 15 Instructions, Argentina, 19-26, 6 Miller, *supra*, 219.

have the same meaning.¹³ But the differences between the two treaties are crucial. The German Treaty covered only disposal of property; the 1881 Treaty very broadly covers acquisition of property as well as disposal. The treaty before us, as we have pointed out, contains the highly significant "most favored nation" clause, long used to broaden the scope of rights protected by treaties; the German Treaty had no "most favored nation" clause. Moreover, the language of other treaties which was almost identical with the pertinent provision in the German Treaty had previously been given a very limited construction by this Court, a construction from which we were unwilling to depart in *Clark v. Allen*. Finally, the relevant history of the negotiations for, the interpretation of and the practices under the 1881 Treaty support petitioners' claims, but no such supporting history was brought to our attention with respect to the German Treaty.

We hold that under the 1881 Treaty, with its "most favored nation" clause, these Yugoslavian claimants have the same right to inherit their relatives' personal property as they would if they were American citizens living in Oregon; but, because of the grounds given for the Oregon Supreme Court's holding, we shall briefly consider whether this treaty right has in any way been abrogated or impaired by the monetary foreign exchange laws of Yugoslavia.

II.

Oregon law, its Supreme Court held, forbids inheritance of Oregon property by an alien living in a foreign country unless there clearly exists "as a matter of law an

¹³ The language relied upon by the Oregon Supreme Court was: "Nationals of either High Contracting Party may have full power to dispose of their personal property of every kind within the territories of the other"

unqualified and enforceable right" for an American to receive payment in the United States of the proceeds of an inheritance of property in that foreign country. The state court held that the Yugoslavian foreign exchange laws in effect in 1953 left so much discretion in Yugoslavian authorities that it was possible for them to issue exchange regulations which might impair payment of legacies or inheritances abroad and for this reason Americans did not have the kind of "unqualified and enforceable right" to receive Yugoslavian inheritance funds in the United States which would justify permitting Yugoslavians such as petitioners to receive inheritances of Oregon property under Oregon law. Petitioners and the United States urge that no such doubt or uncertainty is created by the Yugoslavian law, but contend that even so this Oregon state policy must give way to supervening United States-Yugoslavian arrangements. We agree with petitioners' latter contention.

The International Monetary Fund (Bretton Woods) Agreement of 1944, *supra*, to which Yugoslavia and the United States are signatories, comprehensively obligates participating countries to maintain only such monetary controls as are consistent with the terms of that Agreement. The Agreement's broad purpose, as shown by Art. IV, § 4, is "to promote exchange stability, to maintain orderly exchange arrangements with other members, and to avoid competitive exchange alterations." Article VI, § 3, forbids any participating country from exercising controls over international capital movements "in a manner which will restrict payments for current transactions or which will unduly delay transfers of funds in settlement of commitments" Article 8 of the Yugoslavian laws regulating payment transactions with other countries expressly recognizes the authority of "the provisions of agreements with foreign countries which are

concerned with payments."¹⁴ In addition to all of this, an Agreement of 1948 between our country and Yugoslavia¹⁵ obligated Yugoslavia, in the words of the Senate Report on the Agreement, "to continue to grant most-favored-nation treatment to Americans in ownership and acquisition of assets in Yugoslavia . . . [and] Yugoslavia is required, by Article 10, to authorize persons in Yugoslavia to pay debts to United States nationals, firms, or agencies, and, so far as feasible, to permit dollar transfers for such purpose."¹⁶

These treaties and agreements show that this Nation has adopted programs deemed desirable in bringing about, so far as can be done, stability and uniformity in the difficult field of world monetary controls and exchange. These arrangements have not purported to achieve a sufficiently rigid valuation of moneys to guarantee that foreign exchange payments will at all times, at all places and under all circumstances be based on a "definitely ascertainable" valuation measured by the diverse currencies of the world. Doubtless these agreements may fall short of that goal. But our National Government's powers have been exercised so far as deemed desirable and feasible toward that end, and the power to make policy with regard to such matters is a national one from the compulsion of both necessity and our Constitution. After the proper governmental agencies have selected the policy of foreign exchange for the country as a whole, Oregon of course cannot refuse to give foreign nationals their treaty rights because of fear that valid international agreements might possibly not work completely to the satisfaction of state authorities. Our National Government's assent

¹⁴ Law To Regulate Payments to and from Foreign Countries, Foreign Exchange Law, Official Gazette of the Federal People's Republic of Yugoslavia, Oct. 25, 1946, Belgrade, No. 86, Year II.

¹⁵ See note 4, *supra*.

¹⁶ S. Rep. No. 800, 81st Cong., 1st Sess., p. 4.

to these international agreements, coupled with its continuing adherence to the 1881 Treaty, precludes any State from deciding that Yugoslavian laws meeting the standards of those agreements can be the basis for defeating rights conferred by the 1881 Treaty.

The judgment of the Supreme Court of Oregon is reversed and the cause remanded for proceedings not inconsistent with this opinion.

Reversed and remanded.